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BUS REGULATORY REFORM

MAY 20 (legislative day, MAY 11), 1982.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 3663]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 3663) to amend subtitle IV of title 49, United States Code, to provide for more effective regulation of motor carriers of passengers, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

BACKGROUND AND NEED

INTRODUCTION

The intercity bus industry functions under legislation passed almost 50 years ago. This legislation will eliminate outdated and cumbersome regulation, thereby allowing greater flexibility of service and increased competition.

In November 1981, the House passed the Bus Regulatory Reform Act of 1981 (H.R. 3663). The bill was referred to the Commerce Committee, and the Subcommittee on Surface Transportation held a hearing on the need for deregulation in the bus industry on March 8, 1982. The Committee approved the bill with an amendment in the nature of a substitute on May 11, 1982 by a vote of 16–1.

Intercity bus transportation in this country had its genesis around 1910, when American entrepreneurs began providing neighboring communities with transportation services via the automobile.

Just over a decade later, the industry had grown to the point where bus operators began to organize at the State level. The first State regulation of the bus industry came in 1914, with the establishment of controls by Pennsylvania over passenger bus rates. Regulation by

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States continued to grow over the next decade and a half. In fact, in 1930, only Delaware did not have some regulation in place.

The kinds of controls placed on the young bus industry varied from State to State, as did the rationale for their imposition. Reasons given included passenger safety, the deteriorating effect of growing bus transportation on roads and bridges, and the negative impact of unregulated route selection and fares.

Carriers engaged in interstate transportation were removed from State regulatory control in 1925, with the Supreme Court decision in *Buck* v. *Kuykendall*, 265 U.S. 207. In that decision, the Court confined State jurisdiction to intrastate transportation, excluding the setting of safety standards or regulations directed to the protection of highway conditions.

Concern by State regulatory commissions and others, following the *Buck* decision, over the problem of unregulated carriers, resulted in appeals for Federal legislation to control the increasing number of interstate operators.

In addition to State regulatory agencies, support for such legislation came from both individual bus operators and their trade associations on the premise that Federal regulation would eliminate irresponsible operators and enhance the industry's reputation. Railroads, as competitors to the intercity bus industry, also supported Federal legislation.

In a 1928 study, the Interstate Commerce Commission (ICC) stressed the need for Federal controls. "Regulation of interstate commerce by motor vehicles, operating as common carriers of passengers on the public highways over regular routes and between fixed terminals, should be provided by law," the Commission concluded.

After debating a number of legislative proposals for several years, Congress passed the Motor Carrier Act of 1935, which placed both bus and truck interstate transportation under the jurisdiction of the Interstate Commerce Commission. Since that time, other Federal agencies have also received certain types of regulatory authority over intercity bus carriers.

Federal regulation of the trucking and bus industries was shaped to a significant degree by the economic conditions prevailing in the 1930s. With the nation in the middle of a depression and increasing numbers of business failures, Congress moved to adopt a similar regulatory plan for both the truck and bus industries.

It was a "sign of the times" that falling prices and business failures should be linked, with excessive competition being held responsible for both conditions. In the case of both motor carriers of passengers and property, which formed a still inexperienced industry seeking stability and its place in the transportation marketplace, the fear of excessive competition was especially strong.

Today, economic conditions are much different. Prices are now generally rising. Within the motor carrier industry itself, technology has matured. Competition is no longer viewed as a detriment to the stability of our national economy. Quite to the contrary, it is now considered an aid to economic stability. Consequently, regulatory reform for both the trucking and bus branches of the motor carrier industry share a common framework.

Still, there are important differences between the two industries, and thus, the approach taken to reform the trucking industry must be modified somewhat to conform to the realities of today's intercity bus industry.

At the outset, it should be recognized that the intercity bus industry deals primarily with passengers, rather than freight. Unlike trucks, which move in response to the demands of commercial shippers and receivers, buses travel according to a regulated schedule or as they are needed. They address directly the needs and desires of the traveling public in a way motor freight carriers do not, except in the area of household goods transportation.

It therefore is not surprising that service standards and consumer protection are somewhat more sensitive issues in the transportation of passengers than for freight transport.

The two industries also differ basically in their competitive structures. In the intercity bus industry, the two largest firms accounted for more than 80 percent of the Class I intercity industry revenues in 1980. No sector of the trucking industry is as concentrated. And, while poor marketplace performance is not an automatic consequence of such revenue concentration in the bus industry, the special competitive structure of that industry must be addressed in any consideration of regulatory reform.

The competitive environment in which the bus industry must operate also sets it apart from the trucking industry. While the latter continues to enlarge its share of the intercity freight market, the bus industry has, in the face of competition from other modes, lost market share through the years.

The automobile has provided especially strong competition, although the bus industry has had its revenues drained by airline and train service as well. Airline regulatory reform has indentified the competition for bus passengers, and Amtrak is providing further comptition to the bus industry on certain important corridor routes.

Given the current competitive scenario for the bus industry, any proposal for regulatory reform of the industry must recognize that its competitive situation is completely different from motor carriers of freight.

A further difference between the bus and trucking industries can be found in the regulatory framework within which each operates. Whereas bus carriers are required to establish through routes and through fares with their connections, interlining is permitted but not required for motor carriers of property. The bus industry is also subject to tighter regulation than the trucking industry in some States, such as New Jersey. New Jersey tightly regulates all facets of bus operations, even though intrastate trucking is deregulated. Taking the interactions between Federal and State regulations into account, as must be done, poses perhaps the most difficult challenge in developing a regulatory reform strategy for the bus industry. Preliminary to the development of such a strategy and, indeed, to the drawing of comparisons between these two motor carrier industries, a thorough knowledge of the structure of the intercity bus industry and a review of relative statistics about that industry are in order.

The American Bus Association's figures show that the intercity bus industry currently is comprised of 1,330 companies, of which about 800 to 850 are interstate and regulated by the Commission while the remainder provide strictly intrastate service.

Using levels of operating revenues as a basis, the Commission identifies interstate carriers, for the purpose of reporting, as Class I, II, and III. Class I carriers are those with annual operating revenues of $3 million or more; Class II are those with operating revenues between $500,000 and $3 million; and Class III are those intercity carriers with less than $500,000 in annual operating revenues. Of the three classes of carriers, only those designated as Class I file detailed periodic reports with the Commission. These reports are the source of most of the detailed information on the industry.

In 1980, the total intercity bus industry had almost $2 billion in revenues, according to figures provided by the American Bus Association and the bus industry rate bureau. For the same period, Class I carriers had slightly more than $1.4 billion in revenues. Even though the 46 Class I interstate carriers constitute a small number when compared to the aggregate number of carriers in the intercity bus industry, the figures show that Class I carriers receive 71.6 percent of intercity bus industry operating revenues.

Greyhound Lines, Inc., is the largest carrier in the industry. It generated overall revenues totaling approximately $824 million in 1980, or about 59 percent of the entire Class I intercity operating revenues.

The second largest entity in the industry is Trailways, Inc., and its controlled Class I affiliates, which in 1980, had approximately $304.5 million in operating revenues, or about 22 percent of the Class I intercity operating revenues.

Carolina Coach Company is the largest of the remaining companies, with 1980 operating revenues totaling $25.8 million. That is approximately 2 percent of the Class I intercity industry. Seventeen percent of the intercity operating revenues is generated by the remaining independent Class I intercity carriers.

Approximately 68 percent of the operating revenues generated by Class I intercity carriers in 1980 were from regular route intercity schedules, with about one percent derived from commuter-type operations, another 15 percent from charter and special operations, and approximately 16 percent from package express and other nonpassenger items.

Bus industry companies have experienced diminished profits over most of the past ten years. Competition from other transportation modes, decreasing ridership, and adjustments in fares made necessary by rising costs have produced a decade of financial deterioration for these companies.

Industry figures tell the story. During the period 1970–1977, ridership experienced a continuing decline, with the exception of 1974 when the country experienced a shortage of gasoline. By 1977, bus ridership was 18 percent below the 1970 level reached in 1970, although passenger gains were experienced in 1978, 1979, and 1980.

Still, even though buses exceed both airlines and the railroads in intercity passenger carriage, the bus share of total intercity public transportation passenger traffic registered a decline from the 1970 level of 48 percent to 39 percent in 1980.

Operating margins for the intercity bus industry generally declined during the 1970–1980 period, registering a low of 3.7 percent in 1978. The decline in operating margins occurred despite a 93 percent growth in industry operating revenues during the same period. Most of the increases were due to passenger fare adjustments and the growth in charter and package express services. Moreover, a 105 percent increase in expenses exceeded the overall revenue growth, thereby impacting negatively on operating margins.

Statistics reveal the predominance of Greyhound Lines, Inc., and its subsidiaries in the overall intercity bus market. However, if one is to view that market in proper perspective, it is also necessary to consider the National Trailways Bus System's coordinated network of transcontinental bus service. The network is basically an alliance of bus companies comprised of Trailways, Inc., its controlled subsidiaries, and about 47 independent bus companies.

Member bus companies in the system seek to provide a better overall nationwide Trailways Bus System aimed at meeting the needs of riders by competing for intercity ridership. To reach this objective, companies in the system agree to coordinate schedules on through routes and to facilitate equipment interchange between participating carriers. The transcontinental system of through routes operated by this association is similar to that of Greyhound Lines, Inc. Interline agreements, like those reached by Trailways and Greyhound, are a very important part of the bus industry business, especially for small carriers.

Any examination of this Nation's intercity bus industry should take into account its unique facet of having only one industry rate bureau. Whereas the motor carriers in our nationwide trucking industry belong to many rate bureaus, most of the larger bus companies and many of the smaller regional carriers belong to the single industry rate bureau, the National Bus Traffic Association. This rate bureau, which now has about 350 members, facilitates the collective determination of rates for regular route passenger service and for package express. It also makes determinations of general rate increases and other general bus industry matters.

After reviewing this history and the current regulatory climate, the Committee reached the position that reforms were required at both the Federal and State levels to assure a viable intercity bus industry; one that could meet the needs of the traveling public.

The reforms, which are set forth in detail in the section-by-section analysis, establish a new regulatory scheme at the Federal level. In addition, they establish a mechanism whereby State determinations that constitute a burden on interstate commerce can be overturned on a case-by-case basis.

In formulating this new structure, the Committee was concerned particularly about certain areas that could be impacted by the new policies. Each is briefly discussed below.

IMPACT ON COMMUTER BUS OPERATIONS

The Committee believes that it would not be in the Nation's interest to hamper the efforts being made by Federal, State and local governments to maintain and increase commuter bus services provided both by public and private carriers. For this reason, the legislation provides

that the Commission may take any significant adverse effect on commuter bus operations into consideration when authorizing entry and exit into the intercity bus industry, or removing operating restrictions that directly compete with commuter bus operations in markets where commuter bus services are operated.

The legislation addresses these concerns in section 6 dealing with entry, section 16 dealing with exit, section 17 dealing with intrastate scheduling and intrastate rate reductions, and in section 7 with respect to restriction removal. In order to emphasize the importance of commuter bus operations, the bill also adds language to the national transportation policy. The language, "provide and maintain commuter bus operations" was added in the policy statement so that it applies in a substantive manner, particularly in those sections that require specific consideration of the national transportation policy in the decision-making process.

SMALL COMMUNITIES

Lightly traveled routes are least able to bear the costs of excessive regulation, and the easing of such regulations will be beneficial there. The smallest carriers, who often specialize in serving smaller communities, are the least able to cope with a complicated and time consuming regulatory structure. Faced with less complex regulation, all carriers, but especially smaller carriers, will find it easier to experiment with new services. For these reasons, many expect that less regulation will lead to an increase in the amount of service offered to small communities. Nevertheless, the Committee realizes that many others have major concerns about the impact of the legislation on the level of service provided to small communities and the Committee has included provisions which provide safeguards against its adverse impact on small communities.

The national transportation policy, which is a guide for the ICC to follow when carrying out the provisions of this act, specifically includes the goal of providing and maintaining service to small communities. In addition, wherever appropriate, the entry and exit provisions direct the Commission to consider the effect on small communities. Moreover, the legislation makes it very easy for carriers to provide new services to communities not regularly served by a motor carrier or where the only motor common carrier of passengers providing interstate transportation service applies to discontinue such service.

Section 16, dealing with exit, specifically requires that the Commission shall consider whether a community is losing its last bus service to that area.

Finally, section 15 provides that the Commission may grant emergency temporary authority to a carrier for passenger transportation in an area or to a point not being served. Carriers can quickly experiment with new service and, thus, serve the public's need. To help facilitate such experimentation, the emergency temporary authority may last 210 days, an increase from present law. And, if a carrier should decide that the long run prospects of serving the route are profitable, the carrier may file for expedited entry under the fitness-only provision of section 6.

These provisions are included specifically to address the concerns which have been expressed in regard to service to small communities.

Along with the beneficial effects of less regulation on small communities, the Committee believes these provisions provide adequate treatment of the concern which is equal to the treatment provided for commuter service. A detailed study of small community service conducted for the Committee has concluded that "service to small towns seems no more threatened than that to larger cities. In fact, based on the available financial data, it appears that the industry is healthier in rural areas than in highly urbanized areas." [1]

SAFETY

Throughout consideration of this legislation, much comment has been made about safety and the need for some additional public protection. The Committee addresses this concern in the legislation by reaffirming that a carrier must qualify as being safe before it can be issued any operating authority by the Commission. In addition, the legislation establishes minimum financial responsibility requirements for carriers operating in interstate commerce in anticipation that such action will establish increased safeguards for the public. Finally, the legislation provides a new enforcement tool for the Commission so that it may take action against carriers engaging in activities constituting an imminent threat to life and property. That tool permits the Commission to suspend a carrier's right to operate in interstate commerce upon 15 days notice, where such action is requested by the Secretary of Transportation.

STATE REGULATION

During the past 30 years, the bus industry has been transformed from one enjoying relative financial prosperity to an industry that has been currently best described as financially weak. In this same period, the industry moved from one that relied primarily on regular route service to one that derives more than 50 percent of its total intercity bus passengers from special operations and charter services. Earnings of the intercity industry peaked in 1971 at $101 million before taxes with an operating ratio of 89.4. With revenues of $953 million that year, the industry achieved a reasonable level of earnings. From that high, however, the industry's earnings steadily declined and bottomed out in the 1976 through 1978 period, with profits running from $52 and $55 million annually. More importantly, the operating ratio continued to deteriorate, until reaching a high of 96.1 in 1978. Continuation of this trend will not provide the earnings necessary to maintain and improve the intercity bus transportation network.

State regulation is one of several significant factors cointributing to this inadequate performance. An individual bus moving in interstate commerce often will pick up and carry many passengers who are strictly intrastate. Thus, that vehicle is regulated by both Federal and State authorities at the same time. State regulatory restrictions on entry, exit, and/or service frequency, and slow action by State regulatory commissions on fare increases, often have significant adverse impacts

[1] "Intercity Bus Service in Small Communities," Committee on Commerce, Science, and Transportation, committee print, 95th Congress.

on intercity bus operations. Thus, these actions impose an unreasonable burden on interstate commerce and must be preempted.

The administration has expressed serious concerns over the Federal/State relationship regarding regulatory reform of the intercity bus industry. In testimony before the Committee, the Department of Transportation (DOT) stated "that many State regulations are presently implemented in a manner in opposition to Federal standards."

Currently, the intercity bus industry operates a large number of regular routes which are either losing money or only marginally profitable. Regular route passenger miles have declined 33 percent since 1950. Yet, during the same time period, only a 21 percent reduction in route mileage has occurred. Most of the discontinued route miles were interstate routes under ICC jurisdiction. The apparent reason has been the near impossibility for carriers to discontinue strictly intrastate routes under the jurisdiction of State regulatory authorities. As a result, a large number of routes, particularly intrastate routes serving rural communities, are cross-subsidized by more profitable interstate routes and charter operations. This has a corresponding effect on interstate traffic as well. Carriers who are unable to obtain State approval for discontinuance of intrastate operations over a particular route seldom find it worthwhile to discontinue interstate operations over the same route. In addition, the carrier who is unable to raise rates high enough on its intrastate route is forced to charge its interstate travelers an inequitable price to remain financially viable. The impact of such practices presents a substantial burden on interstate commerce. The following examples, which were presented to the Committee, illustrate the problems associated with State regulation.

Regulatory lag

Between 1966 and 1980, Greyhound filed 12 general fare increase applications in California, four in each 5-year period. The average time between the filing and effective date of the authorized increase escalated from 161 days during 1966–70, to 184 days during 1971–75, and eventually to 242 days in 1976–80. Thus, between 1966–80, Greyhound has seen a 50 percent increase in the time California takes to process its applications, although the likelihood that the application will be granted in full has increased from period to period.

During 1976–80, each of the four increases was approved in its entirety; the last two had no opposition and the California Public Utilities Commission scheduled no hearings. These last two increases, however, consumed 359 and 245 days each.

Lost revenue due to the delays is estimated at between $10,000 and $20,000 daily.

Between 1975 and 1980, Greyhound filed general increases on 147 occasions in 44 States. While 15 States acted on filing in a maximum of 45 days, similar to the ICC, the remaining 29 States average 152 days. Six States averaged well over 200 days, with a range of 205 to 355 days.

Brander Bus Lines, Inc. of Rehoboth, Mass., which had not asked for a fare increase in 13 years, was denied an increase in a decision which the Massachusetts Department of Public Utilities took more than 10 months to reach.

Arrow Stage Lines, Inc. of Sioux City, Iowa, told the National Bus Traffic Association (NBTA) that the State of Iowa demands so many

data that it cannot afford the cost of applying for an increase, thus "we don't even ask for it anymore."

An NBTA survey of its member carriers disclosed that Arizona, South Dakota, Massachusetts, California, and Louisiana took an average of more than 200 days to decide an intrastate rate increase proposal.

The average delay in Georgia, North Carolina, Arkansas, Illinois, Kansas, Oklahoma, Minnesota, Missouri, Nebraska, Texas, Wisconsin, New Mexico, and New York is more than 100 days from the proposed effective date to the actual effective date.

Some States, that is, New York, openly declare that interstate fares should subsidize intrastate traffic. At the present time Greyhound's intrastate New York fares are about 2 cents a mile below its fares in other States.

"Closed-door" policies

An additional State barrier causing economic difficulties for carriers has been the "closed door" policy. Frequently, carriers operating under interstate certificates have been denied authority to pick up or drop off passengers traveling between intrastate points over the carrier's interstate route. As an example, on September 27, 1977, Trailways filed an applicantion to "open its doors" in Ohio to intrastate traffic on its two major interstate routes moving through the State. Almost 4 years later, on May 27, 1981, the Ohio Public Utilities Commission denied entire Trailways application except for two intrastate routes not served by Greyhound, and express freight between Cleveland and Toledo.

State policy such as these are designed to protect existing intrastate carriers from competition. However, such a policy causes an unreasonable burden on interstate commerce. Interstate carriers often need intrastate passengers to make their overall routes profitable. This restriction contributes to the declining financial position of the bus industry. In addition, retention of such State limitations runs contrary to two overriding principles of our legislative intent—increased competition and improved operational and energy efficiency in this era of diminishing resources.

Intrastate fare levels

A NBTA survey of its membership contained the following examples of the extent to which intrastate fares are depressed in relation to interstate fares.

Greyhound's intrastate fare between Johnstown and Philadelphia, Pa., is $20.25. The interstate fare between the same points is $26.90, a difference of more than 35 percent.

Texas, New Mexico and Oklahoma Coaches, Inc., has an intrastate fare of $23.60 between Lubbock and Dallas, Tex., a distance of 330 miles. It has an interstate fare of $37.95 between Lubbock and Albuquerque, N. Mex., a distance of 315 miles.

Hiawatha Coaches must charge $3.51 between LaCrosse and Tomah, Wis., but between LaCrosse and Prosper, Minn., the fare is $5.40 The distance between both points is the same.

Indian Trails has an intrastate fare of $6.00 between Battle Creek and Dowagiac, Mich., a distance of 67 miles. Its interstate fares between South Bend, Ind., and Kalamazoo, Mich., a distance of 68 miles, is $9.10.

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Trailways has an intrastate fare of $25.39 between Los Angeles and San Francisco, Calif. Between Los Angeles and Phoenix, Ariz., however, the fare is $39.60. The distance between both points is 400 miles.

A DOT study of 164 city-pairs found that, on a cents per mile basis, intrastate fares average 31 percent lower than interstate fares on routes up to 400 miles in length, and 41 percent on routes 400 miles or longer.

[Mean, cents per mile]

Mileage	Interstate	Intrastate	Intrastate, lower percent
0 to 99	13.06	8.98	31
100 to 249	11.78	8.09	31
250 to 399	10.82	7.50	31
400 to 549	10.83	6.35	41
550 plus	8.87		

Source: "An Analysis of Intercity Bus Fares Under Varying Competitive Conditions," U.S. Department of Transportation, Research and Special Programs Administration, Transportation Systems Center, January 1981.

In the year following total deregulation of the motor carrier industry in Florida, fares on a number of routes increased by about 40 percent on average. However, even after these increases, intrastate Florida fares were still less than interstate fares over comparable distances.

Discontinuance of service

Most States require hearings before a carrier's request to discontinue service is decided. Typically, the carrier must file an application to discontinue. Then it must wait until a notice is published. The matter is then set for hearing, which usually will be held even if the application is unopposed. The time-consuming, expensive discontinue procedures required by most States inhibit carriers from attempting any innovations in service.

Seashore Transportation Company of New Bern, N.C., at one time operated a route between New Bern and Washington, N.C., carrying less than 15 pasengers a week between any two points on the route. Seashore was operting 4,268 miles per month with revenues of less than $100. Discontinuance of daily service involved a hearing before the North Carolina Public Utilities Commission and a 6 month delay in issuing a decision. Seashore is still required to operate that route on Saturdays, with revenues of only 56 cents per mile and operating costs of $1.17 per mile.

Greyhound is seeking to discontinue a route between Henryetta and McAlester, Okla., via Wetumka. The application was filed July 16, 1980, but as of March 16, 1981, the case had not been set for hearing. As of that date, the delay had cost Greyhound $23,836.

Trailways attempted to discontinue a route between Springfield, Mo. and Muskogee, Okla. Neither State authorized discontinuance and, as a result, losses from intrastate operations in the two States will amount to $86,329.

Trailways filed four discontinuance applications in Kansas on October 26, 1980, but they were still pending on March 15, 1981. Trailways' average annual loss from each of those routes is $110,385.

Intrastate bus schedules

Oklahoma requires a hearing on every change in a bus schedule.

In 1977, Trailways tried to reduce service between Logan and Charleston, W.Va. Trailways provided two round-trips daily between these points using a 46-passenger bus, but only about 6 passengers rode the bus in any one direction. A reduction from two round-trips to one was denied. Because of its losses, Trailways then tried unsuccessfully to sell or lease the involved route. Finally, in June 1980, 3 years after its initial application, Trailways was permitted to make the schedule reduction. During this period Trailways lost $176,674 on the route.

On July 23, 1979, Greyhound filed with the West Virginia PSC to discontinue 4 schedules, effective September 2, 1979. These schedules involved service between Charleston and Beckley, Bluefield, Clarksburg and, Whitesville. After a series of actions by the PSC, on April 25, 1980, the hearing examiner recommended discontinuance of three of the schedules and reduction on one, effective May 1, 1980. Greyhound estimated its loss on this at over $104,000.

This State activity discourages new entry into the regular route market. The need to cross-subsidize from profitable interstate routes forces existing carriers to oppose new entry into interstate routes. New companies find it more lucrative to enter the charter and special operation businesses on both an interstate and intrastate level without getting caught in the federal/State regulatory morass and the industry's cash flow has been insufficient to replace its capital, particularly for terminals. The net result of the contraction of traffic on regular route services resulting from the expansion of traffic on charters and tours is that virtually the great majority of all applications for new opertaing authority have been for tours and charters, rather than for regularly scheduled operations.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 12, 1981.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 3663, the Bus Regulatory Reform Act of 1982, as ordered reported by the Senate Committee on Commerce, Science and Transportation, May 11, 1982.

H.R. 3663 amends the Interstate Commerce Commission Act to reduce Interstate Commerce Commission (ICC) regulation of the bus industry. The bill liberalizes entry procedures into the motor carrier of passengers field by requiring persons that oppose the ICC's granting of new operating authority to prove that such rights should not be awarded. Currently, new applicants must prove that they should receive the authority.

The bill adds four members to the Motor Carrier Ratemaking Study Commission established by the Motor Carrier Act of 1980, Public Law 96–296 and authorizes additional appropriations of $1 million for a final report by January 1, 1984, on the motor common carrier of passengers.

The bill establishes a zone of rate freedom for bus companies which permits such companies to raise their rates 10 percent above the rate in effect for one year prior to the effective date of the proposed increase, and to lower their rates 20 percent below the lesser of the rate in effect on the effective date of this bill or the rate in effect for one year prior to the effective date of the proposed decrease. One year after the effective date limits for the zone of rate freedom become 15 percent up and 25 percent down; and two years after, they become 20 percent up and 30 percent down. Three years after the effective date of the legislation, the bill removes ICC authority to suspend rates, except where a rate is predatory or set under collective ratemaking action.

The bill directs the Secretary of Transportation to establish minimum levels of financial responsibility for buses engaged in interstate or foreign commerce, and removes motor carriers from ICC jurisdiction in the securities area.

A number of studies and reports are required under the bill, including one by the ICC on the results of efforts to establish uniform standards and procedures. In addition, studies and reports are required on the use of citizen band radios by passenger carriers and the ownership, location and adequacy of bus terminals.

The bill also establishes an employee protection program for individuals whose employment is terminated by a carrier (other than for cause) prior to the last day of the ten-year period beginning on the date of enactment of this bill. The individual shall have the right of priority reemployment and any motor carrier hiring additional employees shall have a duty to hire an individual eligible for protection under this bill. The ICC shall publish and maintain a list of jobs available in the industry and require each class I carrier to file reports with the Commission necessary to maintain the lists.

Based on review of the bill and discussion with ICC staff, it appears that the small potential savings associated with the deregulation of the bus industry would be offset by increased costs associated with implementation of the bill and its various provisions. It appears, therefore, that except for the additional $1 million authorized for the Motor Carrier Ratemaking Study Commission, there will be no significant costs or savings to the government as a result of enactment of this bill.

Should the Committee so desire, we should be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

It is the judgment of the Committee that implementation of the bill, as reported, will not result in any increased Federal regulation. The

legislation, as reported, will result in a decrease in the level of Federal regulation by: (1) reducing the Interstate Commerce Commission's ability to control entry of a carrier into markets. The ICC only determines if a carrier is safe and meets minimum insurance requirements, and, in certain situations, whether entry is inconsistent with the public interest (section 6); (2) removing many Federal restrictions on operating authority (section 7); (3) eliminating and reducing burdensome rate filing procedures at the ICC (sections 10 and 11); (4) exempting brokers of passengers from all Federal regulation except for the ability of the ICC to require bonds or insurance or both (section 14); (5) allowing the ICC the discretion to exempt small truck company mergers and other transactions from certain statutory requirements (section 21); (6) exempting motor carriers from having to obtain ICC approval prior to issuing securities and moving jurisdiction to the Securities and Exchange Commission (section 19); and (7) allowing the ICC to expedite the procedures of providing interested parties notice of entry or restriction removal applications (section 28).

The legislation will have beneficial economic impact to both the intercity bus industry and passengers by providing for a more competitive, less regulated environment.

The legislation will result in decreased regulation. Correspondingly, there will be less paperwork for the entire industry, the DOT, and the ICC.

The legislation will not have any adverse impact on the personal privacy of the individuals affected and will allow them greater freedom to conduct their business as a result of decreased regulation.

Section-by-Section Analysis

Section 1. Short title

The short title of the bill is the "Bus Regulatory Reform Act of 1982".

Section 2. Purpose of the bill

The purpose of the bill is to reduce unnecessary and burdensome Government regulation.

Section 3. Congressional findings

The findings highlight the importance of a sound and competitive bus industry and the need for that industry to meet the transportation needs of the citizens of this country. It is emphasized that the existing Federal and State regulatory structure has tended to impair, in certain circumstances, the ability of carriers to enter markets and to maximize use of equipment and opportunities to expand. The Committee finds that this overly protective regulation has caused diminished price and service competition. The ICC is given explicit direction to reduce regulation and to do everything possible to promote competition in the industry. It is through greater competition and reduced regulation that the goals of the national transportation policy can be best achieved.

Section 4. Congressional oversight

The bill directs the appropriate Congressional authorizing committees to hold periodic oversight hearings to assure that the Act is being implemented according to Congressional intent and purpose.

The committees are to hold hearings no less than annually until July 1, 1985. The Committee intends to hold its first oversight hearing within one year after the effective date of the Bus Regulatory Reform Act of 1982.

Section 5. National transportation policy

Section 5 amends the national transportation policy by modifying subsection (a) of section 10101 of title 49, United States Code, to incorporate motor carriers of passengers into the provision added by the Motor Carrier Act of 1980 for motor carriers of property, with some modification. This language states that it is the Federal policy with respect to all motor carriers to promote competitive and efficient transportation services in order to meet a number of important goals.

Specifically, Section 5 adds nine guidelines for the regulation of all motor carriers. These include: meeting the needs of shippers, receivers, passengers, and consumers; allowing a variety of quality and price options; allowing the most productive use of equipment and energy resources; enabling efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; providing and maintaining service to small communities and small shippers; providing and maintaining commuter bus operations; improving and maintaining a sound, safe, and competitive privately-owned motor carrier system; promoting greater participation by minorities in the motor carrier system; and promoting intermodal transportation.

Three additional guidelines are added with respect to regulating transportation by motor carrier of passengers. The ICC is directed to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this subtitle; to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this subtitle; and to ensure that Federal reform initiatives contained in this Act are not nullified by State regulatory actions.

The inclusion of specific language in the transportation policy pertaining to motor carriers of passengers is intended to address major issues facing the industry. The requirement that the ICC seek to provide and maintain commuter bus operations recognizes the importance of public and private commuter bus service in the Nation's intercity bus system. This language is a substantive guideline to be used by the ICC in interpreting the act. It should be noted that the new language asserts the same policy with respect to commuter bus operations and service to small communities. Further, the consideration of State regulatory actions and procedures recognizes the significant burdens on interstate commerce resulting from numerous regulatory decisions. The inclusion of specific policy goals for motor carriers of passengers in the transportation policy and the specific preemption of burdensome State regulation contained in other sections of this act are clearly intended as a recognition that the other goals of the national transportation policy with respect to motor carriers of passengers can only be achieved by a rational and less burdensome system of governmental regulation.

The Committee believes that the addition of these guidelines for the regulation of motor carriers of passengers will promote competitive and efficient transportation service. This section is intended to provide

the ICC, the bus industry, and the public with specific guidelines regarding the ICC's administrative actions. The new transportation policy will be a consideration in many applications for new entry, to removing operating restrictions, and in allowing exit pertaining to interstate and intrastate exit.

Section 6. Motor carrier of passengers entry policy

Section 6 of the bill adds a new subsection to section 10922 of title 49, United States Code, to govern applications for authority to operate as motor common carriers of passengers. The purpose of this subsection is to significantly reduce entry barriers for all forms of intercity bus service and to permit existing bus companies to expand their services and to provide more efficient interstate and intrastate services.

Under existing law, in order to grant an application for authority to operate as a motor carrier of passengers, the ICC is required to find (1) that the applicant is fit, willing, and able to provide the transportation and to comply with the ICC's regulations and (2) that the transportation to be provided is or will be required by the present or future public convenience and necessity.

The importance of entry reform was noted by the Department of Justice in its comments on H.R. 3663:

The fundamental tenet of our economic system is that the competitive market will achieve the greatest efficiency in allocating goods and services. An essential prerequisite to the functioning of competition is unrestricted entry into the market. Without the constant threat of entry by new firms, fares could be set by incumbents at unnecessarily high levels, and output and service quality could be reduced at consumer expense. When regulation prevents free and open entry into a market, it is a virtual certainty that economic waste will result. But if regulatory barriers to entry into the intercity bus industry are eliminated, the threat of entry would provide incumbent carriers with the incentive to provide efficient operations at the lowest rates consistent with the quality of service that consumers prefer.

While the Committee did not adopt the Department of Justice's recommendation in its entirety, section 6 of this act will make it easier for persons to enter the intercity bus industry and for existing bus companies to expand their operations.

New subsection 10922(c) requires the ICC to find that the applicant is fit, willing, and able. The burden of proof in this case is on the carrier applying for the operating authority.

For charter or special operations service to be provided by privately-funded companies, the ICC is required only to find that the applicant is fit, willing, and able. For regular route service or any service to be provided by a carrier receiving government financial assistance, the ICC is to issue a common carrier certificate if it finds the person fit, willing, and able, unless the ICC finds, on the basis of evidence presented by opponents, that the proposed transportation is not consistent with the public interest.

The new public interest requirement will also make it easier for applicants to obtain operating certificates. The Committee intends that this test be interpreted as a substantially lesser entry standard test than the traditional public convenience and necessity standard. In fact, under this bill, entry will be easier than it is for motor carriers of property under the Motor Carrier Act of 1980.

The bill makes two other important changes in the entry procedure. First, the new evidentiary standard ("consistent with" rather than "required by") will expedite the substantive analysis of the application. Second, the provision creates a presumption that the grant of the application is consistent with the public interest. This means that the burden will be on any protestant to provide sufficient evidence to negate the presumption of consistency. It should be clearly understood, however, that the burden placed on protestants is not insurmountable and that the entry test should not be treated by the ICC as a regulatory charade.

The bill also substantially eases intrastate entry for interstate carriers. Sections (2)(A) and (B) are intended to remove the problem of "closed door" intrastate policies on interstate operations. Historically, some States have refused to authorize carriers to provide service between points in that State as part of an interstate operation being conducted between those two points and points beyond. This type of State denial of operating authority generally causes an unreasonable burden on interstate commerce and can no longer be justified. Bus carriers usually need both interstate and intrastate authority in order to remain viable, and furthermore such closed door policies are contrary to the policies of the act favoring increased competition and improved operational and energy efficiency.

For entry authority to serve intrastate points on existing interstate routes, the Commission is to allow entry unless it finds that the intrastate service would directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed. For intrastate entry authority to serve points on new interstate routes, the ICC is to allow entry unless it finds the transportation to be authorized is not consistent with the public interest. The burden of proof is on the protestant. The bill also allows immediate entry for interstate carriers to provide pick-up and delivery express service within the commercial zone of each city served by the carrier.

It should be noted that a carrier can be found to directly compete with a commuter bus operation even if the service to be authorized does not have all of the characteristics of "commuter bus operations" as defined in the Act. When there is such direct competition, the directly competitive service must be shown to have a prospective significant adverse effect on all commuter bus service in the area where the competing service would be performed.

The terms "commuter bus operations" and "commuter bus service" are synonomous. The definition of "commuter bus operations" is set forth in subsection (e)(1) of section 6. The new definition of "commuter bus operations" includes short-haul regularly scheduled passenger service utilized primarily by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak period operations.

The ICC is to take final action on these intrastate applications under section (2)(A) within 90 days. Any intrastate transportation authorized by the ICC shall be subject to ICC jurisdiction. Upon issuance of such certificate, the carrier is to establish initial rates, rules, and practices applicable to such transportation to the same extent and in the same manner as would a carrier subject to ICC jurisdiction.

Any such initial rate, rule, or practice related to this transportation shall be subject to Federal regulations as if it were related to interstate transportation.

Within 30 days after a common carrier begins providing intrastate transportation approved by the ICC, the carrier is to take all action necessary under the laws of the State to establish rates, rules, and practices applicable to such transportation. Intrastate transportation authorized by the ICC shall remain subject to ICC jurisdiction and initial rates, rules, and practices established by the carrier shall remain in effect until permanent rates, rules, and practices are established under the laws of the State. The ICC can suspend or revoke intrastate transportation it has authorized.

These transitional provisions are intended to insure that carriers can expeditiously commence the subject intrastate operations and can avoid unduly burdensome State startup requirements.

Paragraph (3) of new subsection 10922(c) specifies the factors to be considered by the ICC in making the public interest determination. Where these factors are applicable it is the intent of the Committee that the ICC should set out a reasonable basis for its decision. The ICC is to consider, to the extent applicable, the national transportation policy, the value of competition to the traveling and shipping public, the effect on small community service, and whether issuance of the certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the service it provides over its entire regular-route system.

In protested entry proceedings, the Committee expects the ICC to consider whether there has been a reduction in service along the route proposed to be served by the applicant. Moreover, it is the intent and expectation of the Committee that evidence of a significant reduction in service be accorded substantial weight by the ICC in determining whether the proposed service is consistent with the public interest. The new entry provisions of the act simply must be read in connection with the liberalized exit policies of section 16 of this act and the increased freedom of carriers to adjust schedules under section 17 of the act. The Committee is aware, of course, that many changes in scheduling are seasonal in nature and do not represent long term reductions in service, and expects this to be taken into account by the ICC.

This last test, impairment, is a systemwide test. The existing carrier must show that the proposed service will impair its ability to provide a substantial portion of its regular route service. In meeting this test a protestant would be required to establish that granting of the application would materially jeopardize its ability to continue operating a substantial portion of its entire regular route system. The "entire regular route system" applies to any bus company and its subsidiaries and affiliates. The Committee believes that the public interest test can be an important tool in insuring that small community service and commuter bus service are not adversely affected by the eased entry standards in the bill. This factor, however, is not intended to undercut or undermine the basic policy objectives of new subsection 10922(c) to ease entry into the intercity bus industry. In fact, it should be noted that this impairment standard is only one of four factors to be considered by the ICC in making its public interest determination. The other factors, including the value of competition, are to be given equal

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consideration by the ICC. Existing carriers have the ability to compete with various marketing and competitive programs and to offer innovative service by offering a variety of price and quality options. There is no reason to expect that motor carriers of passengers offering satisfactory and adequate services to satisfied customers would immediately upon the introduction of new service lose those passengers to the new carrier. The Committee wishes to emphasize that the paramount consideration is the benefits derived by the public and not the protection of carriers. The success or failure of a carrier should be determined in the marketplace and not in the regulatory arena.

In specifying the public interest determination factors, the Committee deliberated requiring the ICC to consider the effect of multiple applications as done in H.R. 3663. The "cumulative effect" provision of H.R. 3663, however, has been removed because the Committee believes the ICC's authority to take such consolidating action is implicit in its authority to make the public interest findings under this section. The Commitee therefore expects the ICC to take such action as is appropriate, but does not believe it necessary to include a specific factor for consideration in the public interest determination.

Paragraph (4) of new subsection 10922(c) eliminates the required finding on public interest for particular types of proposed service. The Committee believes it is clear that the types of services listed in this paragraph are consistent with the public interest, and that there is no need for the ICC to make such a determination on a case-by-case basis.

Three types of proposed service would be subject to a fitness-only test:

(1) interstate service to any community not regularly served by a motor common carrier of passengers;

(2) interstate service which will be a substitute for discontinued rail or commercial air passenger service if the discontinuance resulted in the community not having any rail and commercial air passenger service; and

(3) interstate service to any community with respect to which the only motor common carrier of passengers serving such community has requested permission to discontinue service or to reduce service to less than one trip daily (except Saturday and Sunday).

Paragrgaph (5) of new subsection 10922(c) prohibits master certification relating to fitness and public interest findings. Applications will be decided by the ICC on a case-by-case basis.

Paragraph (6) of new section 10922(c) modifies the fitness standard by directing the ICC to look at safety fitness and an applicant's proof of insurance, subject to the minimum insurance standards of this act. The Committee strongly believes that these are the only factors appropriate for the government to evaluate in making fitness determinations. The Committee does not intend for the ICC to place additional barriers to entry by a restrictive interpretation of fitness requirements and applicants' abilities to meet them, or to attempt to substitute regulatory processes and bureaucratic judgment for normal business judgments.

Paragraph (7) of new subsection 10922(c) lists the qualifications for protesting an entry application or a request to remove operating restrictions under section 10922(i)(4) of this title. These qualifica-

tions are the same as those enacted for motor common carriers of property in the Motor Carrier Act of 1980. It should also be noted that under subparagraph (C) any carrier may protest on the grounds of safety fitness.

Paragraph (8) of new subsection 10922(c) prohibits motor contract carriers of passengers from protesting applications of motor common carriers of passengers.

Paragraph (9) of new subsection 10922(c) clarifies existing law by expressly stating that authority to provide special or charter transportation of passengers by motor vehicle includes authority to provide such transportation as round-trip service and as one way service if such one-way service may be provided as part of a round-trip movement involving the same passengers and air, rail, or water transportation. This provision recognizes developing intermodal transportation systems. The act also redefines common carrier authorities in paragraph (4) of section 10922(e), as redesignated. The act includes in operating certificates permissive authority to transport newspapers, passenger baggage, express, or mail in the same vehicle with passengers baggage in a separate vehicle.

Section 6 of the bill also contains a provision to deal with entry into U.S. markets by Mexican or Canadian motor carriers. The bill requires the President, as appropriate, to enter into discussions with foreign authorities regarding the establishment of agreements to ensure fair and equitable treatment of U.S. motor carriers. The Committee intends that fair and equitable be construed to protect U.S. motor carriers against unjustifiable or unreasonable, discriminatory, predatory or anti-competitive practices. The ICC is prohibited from issuing motor common carrier operating authority to foreign carriers until the President has certified that such an agreement has been reached. Upon receipt of certification from the President, the ICC shall issue motor common carrier operating authority except where the ICC determines that restriction on access by U.S. carriers to foreign markets have been imposed which are inconsistent with the agreements.

The section permits the ICC to take action to encourage compliance with these agreements. The ICC must solicit the views of the U.S. Trade Representatives, the Department of State and the DOT in considering any complaints or in any proceedings under this subsection. Carriers must be provided reasonable notice and opportunity to file written evidence and argument on the complaint. Any ICC action under this subsection must be presented to the President for review; the President may disapprove ICC actions on the basis of foreign policy or national defense considerations within 60 days. The ICC is to exercise its duties under this section consistent with treaties, conventions, or agreements in force between the United States and foreign countries.

Further, the ICC is prohibited from issuing motor common carrier operating authority to foreign carriers unless the political subdivision or country grants authority to U.S. carriers to provide such transportation.

Taken collectively, the entry provisions should encourage greater efficiency in operations, lower costs, more innovation, greater variety of service and price options and more flexibility in operations. Further, there is a recognition that motor carriers of passengers will be

more responsive to the needs and desires of the traveling and shipping public, particularly as competitive market forces and carrier management replaces regulatory restraints.

The liberalized entry provisions also recognize that motor carriers of passengers need additional flexibility to compete with the private automobile, air carriers and rail. Bus companies compete with all other intercity passenger travel modes and account for only 2 percent of total intercity travel. Bus companies should be afforded the tools to vigorously compete with other common carrier modes and the automobile on an even footing by the elimination of artificial regulatory restraints, State or Federal. The entry provisions balance the needs of the national transportation policy against the legitimate interests of States. However, State action should not be used to frustrate the greater efficiency of the entire transportation system. The basic philosophy underlying the bill is that less regulatory intrusion and more carrier initiatives are to be encouraged.

Section 7. Restriction removal

As in the motor carrier of property industry, the Committee has found that motor carriers of passengers are unduly burdened with route restrictions which hamper the industry's ability to serve the public interest.

Although the intercity bus industry is already the most fuel efficient mode of intercity transportation, it is readily apparent that its passenger-mile-per-gallon raio could be improved by removal of burdensome operating restrictions. Further, the Committee believes such action would enable several of the goals set forth in the national transportation policy in section 5 to be better realized.

To meet these concerns, on the effective date of the act, certain ICC imposed operating restrictions are removed from existing bus certificates. Certificates shall be deemed to authorize, but not require: (1) roundtrip operations where only one-way authority exists; and (2) special and charter transportation from all points in a political subdivision of a State in any case where such authority is limited to one or more points of origin.

With respect to restrictions against service to intermediate points on routes over which transportation of passengers is authorized by an interstate certificate, this section of the bill provides for removal of such restrictions by the ICC within 90 days upon the request of the holder. The ICC would be required to remove an intermediate point restriction unless it found that the resulting interstate transportation "directly competes with a commuter bus operation" and "will have a significant adverse effect on commuter bus service in the area in which the competing service will be performed."

The same "commuter bus operations" test found in section 6 is applicable to section 7.

Section 8. Mixing regular and charter transportation

This section allows greater flexibility for carriers to mix passenger groups. This will result in better utilization of equipment and greater service and price options for passengers.

Motor carriers of passengers will be able to provide charter service in the same vehicle and at the same time as regular route passenger service. Charter trips between points authorized in the charter cer-

tificates could make use of authorized regular route service over any segment of the charter trip. This provision applies only to intrastate transportation if the carrier has the appropriate State authority. Special or charter transportation may be provided in the same vehicle as regular-route transportation if the mixing of passengers does not interfere with the obligation of the common carrier to comply with the national transportation policy.

New subsection (j)(3) permits carriers to transport more than one charter group on a bus performing charter operations. This does not authorize every seat to be sold as an individual charter arrangement, but it does allow the carrier to transport more than one charter group on a bus at the same time.

By allowing a common carrier authority to mix charter and regular route passengers, it is hoped that the passenger will be better served by a carrier's increased ability to offer lower rates.

Section 9. Rule of ratemaking

This section would establish a rule of ratemaking which must be considered by the ICC in proceedings to determine the reasonableness of rate levels of passenger carriers. It would authorize revenue levels for passenger carriers that are adequate to allow well-managed carriers to cover their costs and to earn a fair return. The standards must allow passenger carriers to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, assure repayment of debt, permit raising of equity capital, and cover the costs of inflation by taking into consideration estimated or foreseeable future costs.

The provision also requires the Commission to consider the new rule of ratemaking once it prescribes the rate.

Section 10. Rate bureaus

This section establishes new guidelines for the bus industry's rate bureau and limits the scope of antitrust immunity.

At the present time, motor carriers of passengers are authorized by the terms of an agreement approved by the ICC to jointly discuss, initiate, and maintain rates for the transportation of passengers and express. Since the agreement was approved by the ICC as in furtherance of the national transportation policy, the antitrust laws do not apply to actions of the carriers in conformity with the collective ratemaking agreement (section 10706(c), title 49, United States Code). This general procedure is permitted to continue under the revised guidelines enacted into law in the Motor Carrier Act of 1980 and as amended by this section.

This section applies subsection 10706(b) to the bus industry, except where specific provisions are set forth which apply solely to the bus industry. The specific provisions are set forth in new subsections (b)(3)(E), (b)(3)(F), and (b)(5).

Subsection (b)(3)(E) limits the scope of antitrust immunity for collective ratemaking. On and after January 1, 1983, no collective ratemaking agreement approved for motor carriers of passengers may provide for discussion of or voting upon single-line rates. Under the House bill, this prohibition would not become effective until January 1, 1984. The Committee agrees with the Department of Justice that the immunity should be terminated sooner.

Second, on and after January 1, 1984, no agreement approved for motor carriers of passengers may provide for discussion of or voting upon any joint rate. The House bill would provide antitrust immunity for an indefinite period with respect to joint rates for interline movements if the carriers involved "can practicably participate" in such movements. The term, "practicably participate," as used in the Staggers Rail Act of 1980, has been interpreted by the ICC as referring to "only those carriers who are direct connectors to a specific joint-line movement of a specific commodity." *Western Railroads-Agreement*, 364 ICC 1, 17 (1980).

In commenting on H.R. 3663, the Department of Justice emphasized that no antitrust immunity is needed for the discussions between direct connectors and that this is true "even when carriers that offer competing single-line services between the same two points also establish a joint-line rate for service between those same points . . ." On the basis of those assurances, the Committee concluded it is not necessary to exempt from the operation of the antitrust laws collective action on joint-rates where all the carriers involved form a part of a particular route.

Finally, as in the Motor Carrier Act of 1980, general rate increases and decreases are excepted from the prohibitions against collective consideration of single-line and joint-line rates. In considering such increases and decreases carriers would not be allowed to discuss individual markets or particular single-line rates or joint rates. Industry average carrier costs and intermodal competitive factors may be discussed by the carriers. Thus, the amount and the structure of a general increase, for example, could be influenced by discussion of airline rates and practices, Amtrak pricing policies, and the cost of travel by private automobile.

Immunity for broad changes in tariff structure and changes in promotional or innovative fares is also retained. The Committee expects the ICC to clearly define these terms. This is especially important in the case of promotional or innovative fares, which include such fares as those for unlimited passenger travel. These fares are below standard fares, benefit the traveling public, and should be encouraged.

Immunity is also retained for publishing of tariffs, filing of independent actions, providing of support services for members, and changes in rules or regulations.

New subsection (b)(3)(F) eliminates antitrust immunity for collective ratemaking for rates applicable to charter operations and to special operations. Using the language of the Motor Carrier Act of 1980, new subsection (c)(5) prohibits the ICC from taking any action which would result in the exclusion of discussion or voting on matters concerning rates, allowances, or divisions prior to January 1, 1983, unless the regulations are to take effect after that date.

Subsection 10(e) of the bill provides for the appointment of four members of the public by the President to the Motor Carrier Ratemaking Study Commission. The newly appointed members will include one member from a motor common carrier of passengers company receiving $3 million or more per year in revenues from motor common carrier of passengers operations, one member from a motor common carrier of passengers receiving less than than $3 million per year from

motor common carrier of passengers operations, and two members not affiliated with the motor common carrier industry. The study commission members representing the motor common carriers of property shall limit their commission voting to matters related to motor common carriers of property. The members representing the motor common carriers of passengers and the public who are not affiliated with the motor common carrier industry shall limit their commission voting to matters related to motor common carriers of passengers. The bill increases the authorization for the study commission from $3 to $4 million.

The study commission will be required to make a full and complete investigation and study of the collective ratemaking process for general rate changes, innovative fare changes, and broad changes in tariff structure of motor common carriers of passengers and upon the need or lack of need for continued antitrust immunity. The study commission will be permitted, but not required, to study the collective ratemaking process for single-line or joint-line rates of motor common carriers of passengers. The study commission will be required to submit to the President and the Congress its final report on the collective ratemaking process applicable to motor common carriers of passengers not later than January 1, 1984.

Subsection 10(f) of the bill provides a transition period during which existing rate bureau agreements can remain in effect until new agreements which conform to the new statutory guidelines can be submitted to the commission. New agreements must be submitted within 120 days after the effective date of this legislation. The reforms in the legislation must be complied with during the transition period.

Section 11. Zone of rate freedom

This section amends section 10708 of title 49, United States Code. A new paragraph (d)(4) extends the zone of rate freedom to motor carriers of passengers. The extent of the zone of freedom and the applicability of the zone for passenger carriers differ slightly from that of the Motor Carrier Act of 1980. Paragraph (4) states that passenger carriers can raise any passenger or express fare (other than charter or special transportation fares) not more than 10 percent above or more than 20 percent below the rate in effect 1 year prior to the effective date of the proposed rate without suspension by the ICC on the grounds that such rate is unreasonable on the basis that it is too high or too low. The carrier must notify the ICC that it wants the rate considered pursuant to this subsection. The use of general rate increases by a passenger carrier will count against the upward zone of freedom.

Clearly, single-line and joint-line rate changes can be made through the zone of rate freedom for motor carriers of passengers. Since passenger carriers are required to have through routes and joint rates under section 10703 of the Interstate Commerce Act, carriers involved in joint rates should be able to use the rate freedoms of the zone which are available to rate changes by a carrier on a single-line route. The Committee notes in this section, as well as section 10, the comments of the Department of Justice on H.R. 3663 that emphasized that no antitrust immunity is needed for discussion between direct connectors on joint rates.

One year after the effective date of the Act, the limits for the zone become 15 percent above and 25 percent below rates then in effect; 2 years after, 20 percent above and 30 percent below. Three years after the effective date, paragraph (e) removes ICC authority to suspend rates, except on ratemaking actions where antitrust immunity is retained or where any rate is predatory or discriminatory. Interested parties may, however file a complaint under section 11701 of this title challenging the reasonableness of a rate filed under the zone. The complaint remedy continues to be available after the specific parameters of the zone are removed after three years. Paragraph (e) requires the ICC to dispose of such complaints within 60 days after the complaint is filed.

The antitrust laws apply to all proposals using the zone of rate freedom. However, subparagraph (b) of paragraph (d)(5) of this section states that an antitrust violation cannot be inferred when a carrier uses the zone of rate freedom to raise a rate which is similar to a joint rate action under the zone taken by such carrier together with one or more common carriers of passengers.

As in the Motor Carrier Act of 1980, the intent of this section is to provide more pricing freedom and less government regulation, and to balance freer entry into, and expansion of, the industry, thus spurring competition both in service and pricing. It is clearly meant to encourage individual ratemaking, to meet inflationary cost increases without undue regulatory lag, and to adapt to changing conditions in individual markets. Such ratemaking flexibility is meant to increase the prospects for a financially healthy bus industry without across-the-board rate changes when changes are not everywhere necessary. This will not only create a more competitive industry, but an industry which can compete better with the other modes, benefiting both carriers and passengers.

Section 12. Rates for special and charter transportation

This section prohibits the ICC from investigating, suspending, revising, or revoking any rate proposed for special or charter bus transportation on the grounds that the rate is unreasonable. This does not, however, limit the ICC's authority to suspend and investigate proposed rates on the basis that the rates constitute predatory practices in contravention of the national transportation policy. The ICC could also consider discriminatory practices that fall within the ambit of predatory practices.

This section requires that a proposed rate change resulting in an increased rate or a new rate applicable to special or charter transportation shall not become effective for 30 days after the notice is published; proposed charter or special operations rate reductions shall become effective for 10 days after the notice is published.

Section 13. Motor contract carriers

This section states that the entry test for bus contract carriers is a fit, willing and able entry test only. Fit, willing and able is defined as a carrier meeting safety and insurance requirements.

This section further allows the ICC to amend or revoke a contract carrier's permit and issue in its place a common carrier certificate if the ICC determines that a carrier's operations do not conform with those of a contract carrier but rather are those of a common carrier.

Section 14. Brokers

This section exempts motor carrier brokers of passengers from ICC regulation except that the ICC retains discretion to impose such requirements for bonds or insurance or both as it determines are needed to protect passengers and carriers dealing with brokers.

Section 15. Temporary and emergency temporary authority

This section generally applies the changes of section 23 of the Motor Carrier Act of 1980 to motor carriers of passengers. This section expedites the handling of temporary authority (TA) requests by the ICC and codifies emergency temporary authority (ETA) for passenger carriers. The main difference between this section and the comparable section of the Motor Carrier Act of 1980 is that in the case of an ETA used for passenger transportation in an area or to a point not previously served, the ICC can extend the ETA an additional 90 days (a total extension of 180 days). The ICC must act upon TA's within 90 days and ETA's within 15 days.

This authority may be used to give passenger carriers authority to enter new routes or a route being discontinued by another carrier and allow a carrier time to evaluate the long term potential of the route without being caught in exit procedures.

However, due to the eased entry and exit provisions which allow a fit carrier to quickly enter a market where there is no bus service, or as a replacement for air or train service, or where another carrier has filed to discontinue service, the Committee believes the times a carrier will seek authority under this sectiton will be limited.

The temporary authority procedures of section 10928 should be consistent with the more liberalized entry provisions of section 6 of this Act and in similar provisions of the Motor Carrier Act of 1980.

Section 16. Exit policy

Currently, many states have regulations that prevent carriers from abandoning or reducing intrastate bus service. State regulations are particularly onerous in situations where carriers are permitted to abandon or reduce interstate bus service, but must continue to provide the intrastate portion of the route. In recognition of the financial penalty imposed upon carriers forced to serve intrastate routes, section 16 proposes a two step process by which the ICC can preempt burdensome state regulations. Section 16 of the bill adds a new section 10935 to title 49, United States Code, which establishes a procedure under which carriers can exist or substantially reduce interstate and intrastate routes on which both types of service are provided.

The Committee strongly believes that a balanced regulatory reform proposal must consider the interaction of entry, rates, and exist regulation. The economic check on greater pricing flexibility is eased entry regulation. However, exit regulation is also an extremely important element of the current restrictions on the intercity bus industry and must be a key element in any regulatory reform proposal, especially in light of the relaxed entry requirements.

The exit policy of the Bus Regulatory Reform Act of 1982 is grounded on the premise that interstate carriers should be permitted to discontinue service over routes that do not cover their variable costs. If easier exit were not assured, the Congressional policy of providing for freer entry would be frustrated. In most cases, trans-

portation of intrastate and interstate passengers in the same bus is required for a successful operation. Carrier will be reluctant to enter into regular-route service if the States will not permit operations that do not cover variable costs to be discontinued.

Interstate Commerce Commission restrictions on exit from the intercity bus industry have had a minimal effect in the past. The more severe check on exit comes from individual State regulatory authorities. Federal reform proposals for exit have to deal with the potential problems that could result from divergent Federal and State policies.

The exit provisions of the Bus Regulatory Reform Act of 1982 set up a procedure that allows interstate carriers to exit from unprofitable routes. At the same time, these provisions recognize the need for the States to play a role in the decisionmaking process and the need to assure that the public interest is protected.

Subsection (a) of section 10935 establishes the criteria that must be met before a bus carrier can petition the ICC for relief. Basically, the carrier must meet five conditions.

First, the bus carrier must be applying to discontinue service or to reduce service to less than one trip per day (except Saturday or Sunday). Reductions in service which do not meet these criteria, such as a reduction in service from five trips per day to two trips per day, do not fall within the scope of proposed section 10935 and are dealt with in section 17 of the Bus Regulatory Reform Act of 1982.

Second, the proposed discontinuance or reduction in service must apply to both the interstate service and the intrastate service being provided along a route for which the carrier has both interstate and intrastate authority.

Third, the bus carrier must have applied to the appropriate State agency, and the State agency must have either denied the request or failed to act within 120 days.

Fourth, the bus carrier must not be owned or controlled by a State or local government.

Fifth, the bus carrier must certify that it has notified the Governor of the State, the appropriate State agency, the affected communities, and such other persons as the ICC may specify that it intends to petition the ICC for relief.

If these conditions are met, the ICC is required to consider granting relief. If no one protests within 20 days, the ICC must allow the discontinuance or reduction in service.

If any State or any other person protests within 20 days, the ICC must grant the discontinuance or reduction in service unless it is demonstrated that it is not an unreasonable burden on interstate commerce to continue or maintain the service. Continuance of the transportation would not be a burden if discontinuance or reduction of the service is not consistent with the public interest and the interstate and intrastate revenues from the service are adequate to cover the variable costs of operating the service.

In defining what constitutes an unreasonable burden on interstate commerce, the bill provides that the intrastate and interstate revenues must be adequate under reasonable pricing practices to cover the variable costs of providing the transportation. By "reasonable pricing practices" the Committee does not intend the ICC to substitute its busi-

ness judgment for that of the carriers. On the other hand, the ICC is not required to look at revenues derived from a service proposed to be discontinued in a vacuum. If a carrier, for example, has priced its service so high as to embargo traffic or if it has failed to maximize revenues by establishing fares that are clearly noncompensatory, the ICC may conclude that the carrier's revenue showing is inadequate.

However, the ICC can only grant discontinuance if the carrier has applied for authority to discontinue the interstate portion of the service under section 10925 of title 49, United States Code, and if the ICC has granted or will grant such authority.

In determining whether the carrier's request is not consistent with the public interest, the ICC is required to consider (to the extent applicable) at least the following:

(1) the national transportation policy set forth in section 10101 of title 49, United States Code;

(2) whether the carrier is receiving or has received an offer of financial assistance from either a public or private source; and

(3) whether the service to be discontinued or reduced is the last motor carrier of passenger service to that area or whether a reasonable alternative transportation service to that area is available.

If the ICC finds that continuing the transportation is not an unreasonable burden on interstate commerce, it is not authorized to preempt the State decision. In this situation, the carrier would have to continue providing the intrastate service as required by the State.

In order to expedite proceedings under this section, the ICC must complete action with 75 days from the time the petition is filed.

The ICC is also given the discretionary authority to require the carrier to continue providing service for up to 150 days after the petition so that, in cases where the discontinuance or reduction in service is to be granted, the State and affected communities have time to find a replacement carrier.

In order to encourage experimental service by a motor common carrier of passengers, the act prohibits States from taking action on exit from service initiated under the three fitness-only cases in section 6. These include entry for: (1) interstate service to any community not regularly served by a motor common carrier of passengers; (2) interstate transportation service which will substitute for discontinued rail or commercial air passenger service; and (3) interstate service to any community where the only interstate bus carrier providing service to the community applies to discontinue interstate service or reduce its intrastate service. Carriers, may, however, be required to give 30 days notice before discontinuing or reducing the service. The Committee believes this provision will be of particular benefit to small communities as carriers will be encouraged to start new service, knowing that if such service should prove unprofitable or otherwise undesirable, the service can be easily discontinued.

Section 17. Discriminatory State regulation of rates and practices

The Committee recognizes that section 17 of the bill, with two exceptions, confers a review power in the ICC with respect to all proposed increases in intrastate passenger fares and express rates. The first exception is that the States would retain full authority over the rates of carriers owned or controlled by a State or local government.

Secondly, State ratemaking authority over the intrastate rates of solely intrastate carriers would not be affected.

Although the ICC, with the two exceptions noted, is granted appellate review power over the intrastate rates of interstate motor carriers of passengers, States would continue to regulate such rates. State regulatory commissions are familiar with the special circumstances which might justify the prescription of some intrastate fares at a level lower than the corresponding interstate fares.

Section 17 would permit the ICC to prescribe any intrastate rate increase of a motor common carrier of passengers if the carrier has requested permission to increase the rate, from the department, agency, or instrumentality of the State having jurisdiction over the intrastate route and the request has been either denied or not acted on finally by the 120th day of the request.

Once the ICC has jurisdiction, it may prescribe the rate, rule, or practice for the carrier if it finds that the rate, rule or practice in effect at the State level causes on unreasonable burden on interstate commerce.

In order to promote a competitive and efficient bus system while ensuring that State regulatory control of intrastate commerce is maintained, the Committee believes that this and other sections strike a reasonable balance between the legitimate interests of interstate carriers and the States.

This section creates a mechanism to remedy situations where State actions are creating an unreasonable burden on interstate commerce. The State could, however, protest at the ICC and argue that the State action was reasonable.

Section 17 creates a new subsection (e) to section 11501 which details the procedure for preempting State decisions with respect to rates and practices. This procedure would also apply to State rate decisions affecting package express rates or practices. The carrier must first file the rate change request with the State and have the request denied or unduly delayed before the carrier could file with the ICC.

There is a rebuttable presumption that any intrastate bus rate, rule, or practice imposes an unreasonable burden on interstate commerce if the ICC finds that: (1) such rate, rule, or practice results in the carrier charging a rate for intrastate transportation which is lower than the rate for comparable interstate transportation; (2) on the basis of evidence presented by the carrier, that as a result of such rate, rule, or practice, the carrier does not receive revenues which exceed the variable costs of providing such transportation; or (3) the appropriate State authority failed to act finally on the request of the carrier to establish such rate, rule, or practice by the 120th day after the date the carrier made the request.

Any rate applicable to solely intrastate transportation imposes an unreasonable burden on interstate commerce if the ICC finds that the most recent general rate increase applicable to the bus transportation in a State is less than the most recent general rate increase applicable to interstate common carrier bus transportation. The Committee wishes to note that the ICC can look at any reasonable period of time in determining whether the State general rate increase is less than the ICC-approved rate increase.

If a carrier applies for relief to the ICC under this section, it is required to submit a copy of such application to the department, agency, or instrumentality of the State which denied or failed to act upon its request. The ICC must take final action within 60 days upon receipt of application.

States may not act on intrastate scheduling changes on authorized interstate routes or on intrastate rate reductions relating to transportation over such routes. For scheduling changes, carries may be required to give States 30 days advance notice. This provision does not apply to intrastate commuter service.

Subsections (c), (d), and (e) provide that the ICC, along with interested States and/or their national associations, shall cooperate with each other to establish standards and procedures to promote, to the extent feasible, uniformity among the States and which are consistent with the standards and procedures established by the ICC for rates, rules, and practices applicable to motor common carriers of passengers. No later than 30 months after the date of enactment of this act, the ICC is required to report to Congress on its efforts in this area.

Section 18. Financial responsibility

Section 18(a) amends existing law to establish minimum levels of financial responsibility for motor carriers of passengers involved in interstate or foreign commerce. The purpose of this provision is to create additional incentives to carriers to operate their buses in a safe manner and to assure that they maintain adequate levels of financial responsibility. The Committee feels strongly that the establishment of minimum levels of financial responsibility to enhance safety is a goal important enough to warrant Congressional action. The purpose of this section is not to substitute regulation by insurance companies for government regulations of passenger bus safety. Rather, it is intended to ensure that adequate sources of compensation are available to compensate those who may be injured while traveling by bus. Given the interstate nature of many carrier operations, a single Federal standard for insurance coverage will be more efficient for carriers and more equitable and certain for consumers.

Section 18(b)(1) and (2) directs the Secretary to establish regulations to become effective one year from the date of enactment to require minimum levels of financial responsibility covering public liability and property damage for the transportation of passengers for hire. The minimum levels of financial responsibility that can be established by the Secretary are: $5 million for vehicles having a seating capacity of 16 passengers or more and $1.5 million for vehicles having a seating capacity of 15 passengers or less. The Secretary of Transportation has the discretion to reduce these minimum levels for the 2-year period beginning on the effective date of the regulations issued under subsection (a), or for any part of this period, if the Secretary finds that such reduction will not adversely affect public safety and will prevent a serious disruption in transportation. During the 2-year period, the minimum financial requirement for a vehicle with a seating capacity of more than 15 passengers is $2.5 million, and no less than $750,000 for a vehicle with a seating capacity of 15 passengers or less.

Subsection (c)(1) provides that, if the Secretary does not establish regulations setting a minimum financial requirement by the end of

the 1-year period beginning on the effective date of the act, then the higher levels cited in 18(b) go into effect until such time as the Secretary, by regulation, changes such amount.

Subsection (c)(2) provides that if the Secretary, by regulation, makes a change as discussed in (c)(1) after the higher levels have gone into effect, then these lower amounts may only remain in effect for a 2-year period, beginning on the 366th day following the effective date of this act.

Section 18(d) sets forth the methods by which carriers will be able to demonstrate financial responsibility. These methods include high self-retention as defined by the Department's Bureau of Motor Carrier Safety, a practice used by much of the intercity bus industry today. The for-hire intercity bus industry generally has had the excellent record with regard to maintaining adequate levels of financial responsibility. Nothing in the language of this section shall be interpreted so as to prohibit deductible or retention arrangements between the insuror and the insured so long as the insured remains responsible to the public for losses within the required limits of liability. It is the sense of the Committee that the majority of current industry practices, including high self-retention, will be acceptable under the regulations to be promulgated by the Secretary of Transportation.

Section 18(e)(1) establishes civil penalties for violations of this section.

Section 18(e)(2) establishes procedures for collecting civil penalties for violations of this section.

Section 18(f) excludes school buses, taxicab service, and certain motor vehicles carrying less than 16 individuals (vanpools).

During the Committee's deliberations on this provision, consideration was given to amending section 30 of the Motor Carrier Act of 1980 which establishes insurance requirements for motor carriers of property. A specific concern raised was the need to clarify that the Motor Carrier Act of 1980 insurance requirements do not apply to State or municipal vehicles. The DOT has interpreted section 30 so as to not include such vehicles under the jurisdiction of this provision. The Committee agrees with this interpretation. However, this clarifying change and other modifications should be made in the context of legislation pertaining to motor carriers of property.

Section 19. Securities

This section removes all motor carriers from ICC jurisdiction in the securities area and places them under the jurisdiction of the Securities and Exchange Commission.

Section 20. Tax discrimination

This section provides that States may not tax at a level which unreasonably burdens or discriminates against interstate commerce. The provision makes current law which prohibits the assessment, levying or collecting of taxes on motor carrier property in a manner different from that of other commercial and industrial property applicable to motor carriers of passengers.

This section applies to motor carriers owned and used in interstate commerce, whether or not subject to the ICC jurisdiction. The provision thus makes the law uniform for motor carriers of passengers and motor carriers of property.

The prohibition applies to taxes on real or personal property, general sales taxes, or other levies that are part of the general tax structure applicable to commercial activity. It does not apply to highway user taxes.

Relief from violations is available in Federal and State courts.

Section 21. Merger procedure

Section 21 gives the ICC the authority to exempt merger, consolidation, and acquisition of control transactions involving motor carriers of property from the pertinent provisions of Title 49. The ICC may exempt such transactions if it finds that scrutiny of the transaction is not necessary to carry out the national transportation policy and either that the transaction is of limited scope or that such scrutiny is not needed to protect shippers from the abuse of market power. In making this determination, the Committee intends that the ICC consider possible anticompetitive effects of the transaction. The ICC may revoke an exemption if it finds that review of the transaction is necessary to carry out the national transportation policy.

Section 21 also reinstates the criteria which the ICC must consider in merger, consolidation, and acquisition of control proceedings involving motor carriers of passengers which existed prior to enactment of the Staggers Rail Act of 1980. These criteria include: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of affected carrier employees.

This section also amends section 11345a to include the mergers of motor carriers of passengers in the expedited procedures established for motor carriers of property in the Motor Carrier Act of 1980.

This section does not in any way affect the ICC's jurisdiction with regard to rail transactions under Subchapter III of Title 49 U.S.C.

Section 22. Safety enforcement

Suspension of a certificate to transport passengers is a severe penalty not only for the carrier but also for passengers who may have no other form of public transportation available. Where a carrier's operations are so unsafe as to constitute an imminent hazard to public health or property, prompt suspension of the carrier's operating authority is necessary.

Section 22 permits the ICC, upon petition by the Secretary of Transportation, to suspend a bus carrier's operating authority if the ICC finds the carrier has been conducting unsafe operations which are an imminent hazard to public health or property. The ICC may suspend the certificate or permit on 15 days notice before the date the suspension is to begin.

The Committee understands the rules of the DOT's Bureau of Motor Carrier Safety could accommodate the carrier's need to be heard before the Secretary of Transportation recommends that the Commission suspend a certificate or permit within the time frame provided in this section. On the basis of that assurance, and because the imminent danger would not permit an adjudicatory hearing, the bill recommended by the Committee denies to carriers the procedural protections of the Interstate Commerce and Administrative Procedure Acts. Neverthe-

less, the Committee expects the ICC to exercise discretion in exercising its summary power of suspension. For example, the ICC should not suspend the entire operating authority of a carrier if it appears that a partial suspension would rectify the imminently hazardous condition and alleviate hardship and inconvenience for passengers. Conversely, the ICC may suspend all of the carrier's operating rights if such action is necessary to correct the hazardous condition and to protect the public.

This confers enormous power to the ICC and the Secretary. The Committee believes that this power should be used in a fair and equitable manner.

Section 23. Illegal operations

This section provides a general civil penalty for illegal operations by carriers not holding authority to operate in interstate commerce. The penalty is up to $1,000 for each violation and up to $500 for each additional day the violation of section 10921 continues with respect to the transportation of passengers.

Section 24. Administrative assistance

The Committee recognizes that, under the provisions of this legislation, local governments and smaller intercity bus carriers may experience an increased desire to involve themselves in proceedings before the ICC. To help facilitate this process, and to assist local governments and these smaller carriers in presenting their positions effectively, section 24 permits the ICC to provide them with assistance in preparing for proceedings dealing with the new preemptive sections of the law. The ICC maintains an Office of Special Counsel and a Small Business Office. Both should be used to implement this provision. This provision parallels section 217(a) of the Staggers Rail Act of 1980 [49 U.S.C. § 10705a(o)], under which the Office of Special Counsel was specifically empowered to assist both shippers and small carriers faced with joint rate surcharges and cancellations and pursuant to which that office has in fact assisted communities and small carriers in numerous rail and motor carrier proceedings.

Section 25. Study of citizen band radios on buses

This section directs the Secretary of Transportation to contract with the National Academy of Sciences to conduct a study of the use of citizen band radios by the operators of carriers providing intercity bus service. The study shall determine the effect on safety if intercity bus operators are authorized to use citizen band radios and the effect on the safety, health and convenience of passengers on these vehicles.

The Academy is to submit a report to Congress and to the Secretary on the result of this study, along with its recommendations within 1 year after entering into a contract with the Secretary.

Within 60 days of submission of the Academy's report the Secretary is required to initiate a rulemaking proceeding to determine whether operators of buses for ICC regulated bus companies should be allowed to use citizen band radios. The rulemaking is to be completed within 120 days after its initiation.

If the Secretary issues a rule or regulation which recommends that bus operators be allowed to install temporarily and operate citizen

band radios the Secretary must issue guidelines on their use to ensure protection of public safety.

A new section 11111 is added which provides that the Secretary may recommend the temporary use of citizen band radios. If the Secretary recommends this, then the Secretary must issue guidelines for their use and installation.

Section 26. Bus terminal study

Two carriers control a large number of the terminals which serve the intercity bus industry. There is a question as to whether or not this impacts on public access to an effective and competitive industry. As a result, this section requires the Secretary of Transportation and the ICC to make a full investigation and study of the relationship between the ownership, location and adequacy of bus terminals and their capacity to provide passenger service in accordance with the national transportation policy. A report, including legislative recommendations, shall be submitted to the President and Congress by December 31, 1983. The report shall include an analysis of: (1) the pattern of ownership of bus terminals, including public and private ownership; (2) the desirability of terminals for more than one mode of transportation and their impact on urban development; and (3) the desirability of governmental assistance in the construction of non-urban bus terminals.

Section 27. Employee protection

The Committee does not believe that this legislation will result in a substantial amount of employee termination. This section, however, provides a right of priority employment for individuals eligible for protection under this section whose employment is terminated by a bus common carrier, other than for cause, within 10 years of enactment of the act. These individuals must be rehired in their occupational specialty subject to certain conditions, by the common carrier who terminated them before the carrier can hire any other individual. In addition, these individuals have a right of consideration for employment by other bus common carriers hiring additional employees.

An individual, other than a member of the board of directors or an officer of a corporation, who was employed by a bus common carrier for 2 years prior to enactement of the act shall be eligible for protection if, upon application by the individual, the ICC determines that his employment has been terminated by a bus common carrier as a result of discontinuance or reduction of interstate and intrastate service. The individual affected is responsible for identifying to the ICC the discontinuance or reduction which allegedly resulted in termination. In contesting the eligibility of such individual, the carrier must show that the discontinuance or reduction was not a contributing factor causing such termination.

The ICC is required to establish, maintain, and publish a list of jobs available with Class I motor carriers of passengers and to make every effort to assist individuals eligible for protection in finding other available employment. These carriers may be required to file relevant information with the ICC.

This section does not affect affirmative action plans, nor does it apply to State or locally owned or controlled carriers or to seasonal discontinuances or reductions in service.

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The ICC is to issue initial rules and regulations on this section 7 months after the effective date of this act. The provisions of this section shall terminate 12 years following the effective date of this act.

Section 28. Publication of Commission actions

This section allows the ICC to adopt, after a rulemaking, a special procedure for providing interested parties reasonable notice of entry or restriction removal applications, rather than requiring use of the Federal Register. In making this change, the Committee intends that the same information that has been available in the past will continue to be made available. However, the Committee believe that such information can be provided at a significant cost saving through other means such as publication by the ICC.

The legislation also amends section 10328 to eliminate the statutory requirement that notice of filing of new applications be provided to state regulatory commissions in all of the states in which the applicant proposes to operate. At present, the ICC's regulations provide for service upon the State commissions at their request. This type of notification will also continue.

Section 29. Gender neutral terms

This section replaces gender specific terms in title 49 of the United States Code with gender neutral terms. For example, the term "seaman" is replaced with "sailor."

Section 30. Effective date

This section states that this act is to take effect 60 days following enactment.

Rollcall Votes in Committee

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following record votes during its consideration of H.R. 3663:

The bill, with an amendment in the nature of a substitute, was reported by the members of the Committee on Commerce, Science, and Transportation by a rollcall vote on May 11, 1982. The vote was as follows:

YEAS	NAYS
Mr. Packwood	Mr. Pressler
Mr. Goldwater [1]	
Mr. Schmitt	
Mr. Danforth	
Mrs. Kassebaum [1]	
Mr. Gorton	
Mr. Stevens	
Mr. Kasten	
Mr. Cannon	
Mr. Long	
Mr. Hollings [1]	
Mr. Inouye	
Mr. Ford	
Mr. Riegle [1]	
Mr. Exon [1]	
Mr. Heflin	

[1] Proxy.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

* * * * * * *

SUBTITLE IV—INTERSTATE COMMERCE

* * * * * * *

§ 10101. Transportation policy

(a) Except where policy has an impact on rail carriers, in which case the principles of section 1010a of this title shall govern, to ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to provide for the impartial regulation of the modes of transportation subject to this subtitle, [and in regulating those modes—

[(1) to recognize and preserve the inherent advantage of each mode of transportation;

[(2) to promote safe, adequate, economical, and efficient transportation;

[(3) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

[(4) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

[(5) to cooperate with each State and the officials of each State on transportation matters;

[(6) to encourage fair wages and working conditions in the transportation industry; and

[(7) with respect to transportation of property by motor carrier, to promote competitive and efficient transportation services in order to (A) meet the needs of shippers, receivers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public; (C) allow the most productive use of equipment and energy resources; (D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain for wages and working conditions; (E) provide and maintain service to small communities and small shippers; (F) improve and maintain a sound, safe, and competitive privately-owned motor carrier system; (G) promote greater participation by minorities in the motor carrier system; and (H) promote intermodal transportation.]

and—

(1) in regulating those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in regulating transportation by motor carrier, to promote competitive and efficient transportation services in order to (A) meet the needs of shippers, receivers, passengers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public; (C) allow the most productive use of equipment and energy resources; (D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (E) provide and maintain service to small communities and small shippers; (F) provide and maintain commuter bus operations; (G) improve and maintain a sound, safe, and competitive privately owned motor carrier system; (H) promote greater participation by minorities in the motor carrier system; and (I) promote intermodal transportation; and

(3) in regulating transportation by motor carrier of passengers (A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this subtitle; (B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this subtitle; and (C) to ensure that Federal reform initiatives enacted by the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions.

§ 10102. Definitions

In this subtitle—

(1) "broker" means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(2) "carrier" means a common carrier and a contract carrier.

(3) "car service" includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier.

(4) "common carrier" means an express carrier, a pipeline carrier, a rail carrier, a sleeping car carrier, a motor common carrier, a water common carrier, and a freight forwarder.

(5) "commuter bus operations" means short-haul regularly scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and utilized primarly by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak period operations.

[(5)] *(6)* "contract carrier" means a motor contract carrier and water contract carrier.

[(6)] *(7)* "control", when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means.

[(7)] *(8)* "express carrier" means a person providing express transportation for compensation.

[(8)] *(9)* "freight forwarder" means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title.

[(9)] *(10)* "highway" means a road, highway, street, and way in a State.

[(10)] *(11)* "household goods" means—

(A) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the Commission may provide by regulation; except that this subparagraph shall not be construed to include property moving from a factory or store, except such property as the householder has purchased with intent to use in his dwelling and which is transported at the request of, and the transportation charges paid to the carrier by, the householder;

(B) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments and such other similar property as the Commission may provide by regulation; except that this subparagraph shall be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as

incidental to moving of the establishment, or a portion thereof, from one location to another; and

(C) articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods and such other similar articles as the Commission may provide by regulation; except that this subparagraph shall not be construed to include any article, whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.

[(11)] *(12)* "motor carrier" means a motor common carrier and a motor contract carrier.

[(12)] *(13)* "motor common carrier" means a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both.

[(13)] *(14)* "motor contract carrier" means—

(A) a person, other than a motor common carrier, providing motor vehicle transportation of passengers for compensation under continuing agreements with a person or a limited number of persons—

(i) by assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

(ii) designed to meet the distinct needs of each such person; and

(B) a person providing motor vehicle transportation of property for compensation under continuing agreements with one or more persons—

(i) by assigning motor vehicles for a continuing period of time for the exclusive use of each such person; or

(ii) designed to meet the distinct needs of each such person.

[(14)] *(15)* "motor private carrier" means a person, other than motor carrier, transporting property by motor vehicle when—

(A) the transportation is as provided in section 10521(a)(1) and (2) of this title;

(B) the person is the owner, lessee, or bailee of the property being transported; and

(C) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

[(15)] *(16)* "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Commission, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

[(16)] *(17)* "person", in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

[(17)] (*18*) "pipeline carrier" means a person providing pipeline transportation for compensation.

[(18)] (*19*) "rail carrier" means a person providing railroad transportation for compensation.

[(19)] (*20*) "railroad" includes—

(A) a bridge, car float, lighter, and ferry used by or in connection with a railroad;

(B) the road used by a rail carrier and owned by it or operated under an agreement; and

(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.

[(20)] (*21*) "rate" means a rate, fare, or charge for tranportation.

[(21)] (*22*) "sleeping car carrier" means a person providing sleeping car transportation for compensation.

[(22)] (*23*) "State" means a State of the United States and the District of Columbia.

[(23)] (*24*) "tariff", when used in reference to a contract carrier, means a schedule.

[(24)] (*25*) "transportation" includes—

(A) a locomotive, car, vehicle, motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.

[(25)] (*26*) "United States" means the States of the United States and the District of Columbia.

[(26)] (*27*) "vessel" means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

[(27)] (*28*) "water carrier" means a water common carrier and a water contract carrier.

[(28)] (*29*) "water common carrier" means a person holding itself out to the general public to provide water transportation for compensation.

[(29)] (*30*) "water contract carrier" means a person, other than a water common carrier, providing water transportation for compensation under an agreement with another person, including transportation on a vessel provided to a person other than a carrier subject to the jurisdiction of the Commission under this subtitle when the vessel is used to transport only the property of the other person.

§ 10321. Powers

(a) * * *

(b) The Commission may—

(1) inquire into and report on the management of the business of carriers providing, and brokers for, transportation and services subject to this subtitle;

(2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker; [and]

(3) obtain from those carriers, brokers, and persons information the Commission decides is necessary to carry out this subtitle [.]; *and*

(4) consistent with the transportation policy of section 10101 of this title, provide administrative assistance to small motor common carriers of passengers and local governments preparing for proceedings under sections 10922(c)(2), 10953, and 11501(e) of this title.

(c)—(e) * * *

§ 10322. Commission action and appellate procedure in non-rail proceedings

(a) This section applies to a matter before the Interstate Commerce Commission over which the Commission has jurisdiction under chapter 705 of this title, other than a matter involving a rail carrier providing transportation subject to the jurisdiction of the Commission under chapter I of such chapter, or section 10934 *or 11501(e)*. The deadlines set forth in this section do not apply to the following sections of this subtitle: 10525(c), 10758(b), [10922 (h)(2),] *10922 (i)(3)* 10928, 19934(c), *10935*, 11345a, and 11701(c). *In addition, the deadlines set forth in this section do not apply to any application filed under section 10922(c) of this subtitle for authority to provide regular-route transportation entirely in one State as a motor common carrier of passengers.*

(b)(1)—(2) * * *

(3) At the earliest practicable time after the filing of application for authority under subchapter II of chapter 109 of this title, the Commission shall publish [in the Federal Register] notice of the filing of such application.

(c)—(i) * * *

§ 10328. Intervention

(a) * * *

(b)(*1*) Under regulations of the Interstate Commerce Commission, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this subtitle related to transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title [49 USCS §§ 10521 et seq.] [that is, or is proposed to be, provided in a State] shall be given to interested persons [and to the authority of that State having jurisdiction to regulate transportation by motor vehicles in intrastate commerce on the highways of that State, or, if there is no such authority, to the chief executive officer of the State.].

(2) The Commission may adopt, after a rulemaking proceeding in accordance with the provisions of section 553 of title 5, a special procedure for providing interested parties reasonable notice of applications to provide transportation as a motor or water common or contract carrier or freight forwarder, or to be a broker for transportation, under sections 10922, 10923, 10924, and 10928 of this title, or applications for

removal of operating restrictions under section 10922 of this title. The special procedure may consist of printing and distributing to subscribers an independent publication to provide notice of such applications, if the Commission finds, as a result of its rulemaking proceeding, that such method of providing notice would not be unduly burdensome to the public.

* * * * * * *

§ 10521. General jurisdiction

(a) * * *

(b) This subtitle does not—

(1) *except as provided in sections 10922(c)(2), 10935, and 11501(e) of this title,* affect the power of a State to regulate intrastate transportation provided by a motor carrier;

(2) *except as provided in sections 10922(c)(2) and 11501(e),* authorize the Commission to prescribe or regulate a rate for intrastate transportation provided by a motor carrier;

(3) *except as provided in section 10922(c)(2) of this title,* allow a motor carrier to provide intrastate transportation on the highways of a State; or

(4) except as provided in section 11504(b) of this title, affect the taxation power of a State over a motor carrier.

§ 10526. Miscellaneous motor carrier transportation exemptions

(a) The Interstate Commerce Commission does not have jurisdiction under this subchapter over—

(1)—(11) * * *

(12) transportation of natural, crushed, vesicular rock to be used for decorative purposes; [or]

(13) transportation of wood chips[.] *; or*

(14) brokers for motor carriers of passengers, except as provided in section 10924(f) of this title.

(b) * * *

* * * * * * *

§ 10701. Standards for rates, classifications, through routes, rules, and practices

(a) * * *

* * * * * * *

(e) In proceedings to determine the reasonableness of rate levels for a motor carrier [of property] or group of motor carriers [of property], or in proceedings to determine the reasonableness of a territorial rate structure where rates are proposed through agreements authorized by section 10706(b) of this title, the Commission shall authorize revenue levels that are adequate under honest, economical, and efficient management to cover total operating expenses, including the operation of leased equipment and depreciation, plus a reasonable profit. The standards and procedures adopted by the Commission under this subsection shall allow the carriers to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, assure the repayment of

a reasonable level of debt, permit the raising of needed equity capital, attract and retain capital in amounts adequate to provide a sound motor carrier transportation system in the United States, and take into account reasonable estimated or foreseeable future costs.

§ 10704. Authority and criteria: rates, classifications rules, and practices prescribed by Interstate Commerce Commission

(a) (1) * * *

* * * * * * *

(b) (1) When the Commission decides that a rate charged or collected by—

(A) a motor common carrier for providing transportation subject to its jurisdiction under subchapter II of chapter 105 of this title by itself, with another motor common carrier, with a rail, express, or water common carrier, or any of them;

(B) a water common carrier for providing transportation subject to its jurisdiction under subchapter III of chapter 105 of this title; or

(C) a freight forwarder for providing service subject to its jurisdiction under subchapter IV of chapter 105 of this title;

or that a classification, rule, or practice of that carrier, does or will violate this chapter, the Commission shall prescribe the rate (including a maximum or minimum rate, or both), classification, rule, or practice to be followed.

(2) (A) When prescribing a rate, classification, rule, or practice for transportation or service by common carriers other than by rail carrier, the Commission shall consider, among other factors, the effect of the prescribed rate, classification, rule, or practice on the movement of traffic by that carrier.

(B) When prescribing a rate, classification, rule, or practice for transportation or service by common carriers other than by rail carrier or motor carrier [of property], the Commission shall consider, among other factors, the need for revenues that are sufficient, under honest, economical, and efficient management, to let the carrier provide that transportation or service.

* * * * * * *

§ 10706. Rate agreements: exemption from antitrust laws

(a) (1) * * *

* * * * * * *

(b) (1) In this subsection, "single-line rate" refers to a rate charge, or allowance proposed by a single motor common carrier [of property] that is applicable only over its line and for which the transportation can be provided by that carrier.

(2) As provided by this subsection, a motor common carrier [of property] providing transportation or service subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title may enter into an agreement with one or more such carriers concern rates (including charges between carriers and com-

pensation paid or received for the use of facilities and equipment), allowances, classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, or establishment of them. Such agreement may be submitted to the Commission for approval by any carrier or carriers which are parties to such agreement and shall be approved by the Commission upon a finding that the agreement fulfills each requirement of this subsection, unless the Commission finds that such agreement is inconsistent with the transportation policy set forth in section 10101(a) of this title. The Commission may require compliance with reasonable conditions consistent with this subtitle to assure that the agreement furthers such transportation policy. If the Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, and the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to parties and other persons with respect to making or carrying out the agreement.

(3) Agreements submitted to the Commission under this subsection may be approved by the Commission only if each of the following conditions are met:

(A) Each carrier which is a party to an agreement must file with the Commission a verified statement that specifies its names, mailing address, and telephone number of its main office; the names of each of its affiliates; the names, addresses, and affiliates of each of its officers and directors; the names, addresses, and affiliates of each person, together with an affiliate, owning or controlling any debt, equity, or security interest in it having a value of at least $1,000,000. In this subparagraph, "affiliate" means a person controlling, controlled by, or under common control or ownership with another person and "ownership" means equity holdings in a business entity of at least 5 percent.

(B) Any organization established or continued under an agreement approved under this subsection must comply with the following requirements:

(i) subject to the provisions of subparagraphs (C) [and (D)], (*D*), (*E*), *and* (*F*) of this paragraph, (I) the organization may allow any member carrier to discuss any rate proposal docketed, but (II) after January 1, 1981, only those carriers with authority to participate in the transportation to which the rate proposal applies may vote upon such rate proposal;

(ii) the organization may not interfere with each carrier's right of independent action and may not change or cancel any rate established by independent action after the date of enactment of this subsection, other than a general increase or broad rate restructuring, except that changes in such rates may be effected, with the consent of the carrier or carriers that initiated the independent action, for the purpose of tariff simplification, removal of discrimination, or elimination of obsolete items;

(iii) the organization may not file a protest or complaint with the Commission against any tariff item published by or for the account of any motor carrier [of property];

(iv) the organization may not permit one of its employees or any employee committee to docket or act upon any proposal effecting a change in any tariff item published by or for the account of any of its member carriers;

(v) upon request, the organization must divulge to any person the name of the proponent of a rule or rate docketed with it, must admit any person to any meeting at which rates or rules will be discussed or voted upon, and must divulge to any person the vote cast by any member carrier on any proposal before the organization;

(vi) the organization may not allow a carrier to vote for one or more other carriers without specific written authority from the carrier being represented; and

(vii) the organization shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed, except that if unusual circumstances require, the organization may extend such period, subject to review by the Commission.

* * * * * * *

(D) No agreement approved under this subsection may provide for discussion of or voting upon single-line rates on or after January 1, 1984, except that such date shall be July 1, 1984, if the Motor Carrier Ratemaking Study Commission does not submit its final report under section 14(b)(4) of the Motor Carrier Act of 1980 on or before January 1, 1983. *This subparagraph shall not apply to any single-line rate proposed by a motor common carrier of passengers.* This subparagraph and subparagraph (B)(i)(II) of this paragraph shall not apply to the following:

(i) general rate increases or decreases if the agreement gives shippers, under specified procedures, at least 15 days' notice of the proposal and an opportunity to present comments on it before a tariff containing the increases or decreases is filed with the Commission and if discussion of such increases or decreases is limited to industry average carriers costs and, after the date of elimination of the antitrust immunity by this subparagraph, does not include discussion of individual markets or particular single-line rates;

(ii) changes in commodity classifications;

(iii) changes in tariff structures if discussion of such changes is limited to industry average carrier costs and, after the date of elimination of antitrust immunity by this subparagraph, does not include discussion of individual markets or particular single-line rates;

(iv) publishing of tariffs, filing of independent actions for individual members carriers, providing of support services for members, and changes in rules or regulations which are of at least substantially general application throughout the area in which such changes will apply.

(E) On and after January 1, 1983, no agreement approved under this subsection may provide for discussion of or voting upon any single-line rate proposed by a motor common carrier

of passengers. On and after January 1, 1984 no agreement approved under this subsection may provide for discussion of or voting upon any joint rate. This subparagraph shall not apply to any rate applicable to special or charter transportation. This subparagraph and subparagraph (B)(i)(II) of this paragraph shall not apply to the following:

(i) any general rate increase or decrease, broad change in tariff structure, or promotional or innovative fare change, as defined by the Commission and subject to such notice requirements as the Commission may specify by regulation if discussion of such general increase or decrease is limited to industry average carrier costs and intermodal competitive factors and, does not include discussion of individual markets or particular single-line rates or joint rates; and

(ii) publishing of tariffs, filing of independent actions for individual member carriers, providing of support services for members, and changes in rules or regulations which are of at least substantially general application throughout the area in which such changes will apply.

(F) After the effective date of the Bus Regulatory Reform Act of 1982, no agreement approved under this subsection may provide for discussion of or voting upon any rate applicable to special or charter transportation proposed by a motor common carrier of passengers. This subparagraph shall not apply to publication of such rate.

[E] *(G)* In any proceeding in which a party to such proceeding alleges that a carrier voted, discussed, or agreed on a rate of allowance in violation of this subsection, that party has the burden of showing that the vote, discussion, or agreement occurred. A showing of parallel behavior does not satisfy that burden by itself.

[F] *(H)* The Commission shall, by regulation, determine reasonable quorum standards to be applied for meetings of organizations established or continued under an agreement approved under this subsection.

(4) * * *

(5) Notwithstanding any other provision of this subtitle (other than paragraph (3)(F) of this subsection, relating to special and charter transportation of passengers), before January 1, 1983, the Commission may not take any action which would, on the basis of the type of carrier service involved (including service by carriers singly or in combination with other carriers), result in the exclusion of one or more motor common carriers of passengers from discussion or voting under agreements authorized by this subsection on matters concerning rates, allowances, or divisions, except that before January 1, 1983, the Commission may issue regulations which take effect on or after January 1, 1983, to carry out the provisions of paragraph (3)(E) of this subsection.

(c) A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title (except a rail carrier or a motor common carrier **[**of property**]**) that is a party to an agreement of at least 2 carriers related to rates (including charges between carriers and compensation paid or received for the use of facilities and equipment), allowances, classifications, divisions, or rules related to them, or procedures for joint consideration, initiation,

or establishment of them, may apply to the Commission for approval of that agreement under this subsection. The Commission shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Commission approves the agreement, it may be made and carried out under its terms and under the conditions required by the Commission, and the antitrust laws, as defined in section 12 of title 15, do not apply to parties and other persons with respect to making or carrying out the agreement.

§ 10708. Investigation and suspension of new nonrail carrier rates, classifications, rules, and practices

(a) * * *

* * * * * * *

(d)(1)–(3) * * *

(4) Notwithstanding any other provision of this title, the Commission may not investigate, suspend, revise, or revoke any single-line rate proposed by a motor common carrier of passengers, or joint rate proposed by one or more such carriers, applicable to any transportation (other than special or charter transportation) on the grounds that such rate is unreasonable on the basis that it is too high or too low if—

(A) the carrier or carriers notify the Commission that they wish to have the rate considered pursuant to this subsection; and

(B) the aggregate of increases and decreases in any such rate is not more than 10 percent above the rate in effect 1 year prior to the effective date of the proposed rate, nor more than 20 percent below the lesser of the rate in effect on the effective date of the Bus Regulatory Reform Act of 1982 (or, in the case of any rate which the carrier or carriers first establish after such date for a service not provided by the carrier or carriers on such date, such rate on the date such rate first becomes effective) or the rate in effect 1 year prior to the effective date of the proposed rate.

(5) One year after the effective date of the Bus Regulatory Reform Act of 1982, the first and second percentages specified in paragraph (4)(B) of this subsection shall change to 15 percent and 25 percent, respectively. Two years after the effective date, the first and second percentages specified in paragraph (4)(B) of this subsection shall change to 20 percent and 30 percent, respectively.

[4] *(6)* Any rate implemented by a carrier pursuant to this subsection shall be subject to the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), except that the docketing and publication of such rate by the carrier under section 10706(b) of this title shall not be construed as a violation of the antitrust laws. *Evidence that any motor common carrier of passengers established pursuant to this subsection a joint or single-line rate applicable to transportation over any route which is the same as or similar to a joint rate applicable to transportation over such route which such carrier together with one or more other motor common carriers of passengers established pursuant to this subsection shall not be in and of itself sufficient to establish a violation of any such antitrust law.* Nothing in this subsection shall limit the Commission's authority to suspend and

investigate proposed rates on the basis that such rates may violate the provisions of section 10741 of this title or constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title.

(e) Notwithstanding any other provision of this title, 3 years after the effective date of the Bus Regulatory Reform Act of 1982, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor carrier of passengers on the grounds that such rate is unreasonable on the basis that it is too high or too low, unless the proposed rate is established collectively in accordance with the procedures of an agreement approved by the Commission under section 10706(b) of this title. In publishing and filing a tariff under section 10762 of this title, the carrier shall disclose whether such rate is the result of collective ratemaking procedures pursuant to an agreement approved by the Commission under section 10706(b) of this title.

(f) Notwithstanding any other provision of this title, an interested party may file a complaint section 11701 of this title challenging the reasonableness of a rate filed under this section by a motor carrier of passengers. Any such complaint proceeding shall be finally determined by the Commission no later than 60 days after the filing of the complaint.

(g) Notwithstanding any other provision of this title, the Commission may not investigate, suspend, revise, or revoke any rate proposed by a motor common carrier of passengers applicable to special or charter transportation. Nothing in this subsection shall limit the Commission's authority to suspend and investigate proposed rates on the basis that such rates constitute predatory practices in contravention of the transportation policy set forth in section 10101(a) of this title.

§ 10722. Special passenger rates

(a)—(b) * * *

(c) A common carrier providing transportation subject to the jurisdiction of the Commission under one of those subchapters may provide transportation without charge for an individual who is—

(1) a necessary caretaker of livestock, poultry, milk, or fruit;

(2) an executive officer, general chairman, or counsel of an employee organization authorized to represent employees of that carrier under chapter 8 of title 45;

(3) an employee in charge of the mails when working or traveling to or from work;

(4) a [newsboy] *newspaper carrier* on a train;

(5) a baggage agent; or

(6) a witness attending a legal investigation in which that carrier has an interest.

(d)(1) In this subsection—

(A) "employee of a carrier" includes an individual who—

(i) is furloughed, pensioned, or not on active duty because of advanced age or infirmity that occurred while the individual was employed by that carrier;

(ii) is being transported for purposes of reemployment by that carrier; or

(iii) was killed while employed by a carrier.

(B) "family" refers to the family of an individual named in clause (A) of this paragraph and includes the [widow] *surviving spouse* or minor child of an employee who died while employed by a carrier.

(2) * * *

§ 10723. Charitable purposes

(a) * * *

(b)(1) A common carrier subject to the jurisdiction of the Commission under subchapter I, II, or III of that chapter may provide transportation without charge to an individual who is—

(A) engaged only in charitable work;

(B) injured in an accident (together with the physicians and nurses attending that individual); or

[(C) a traveling secretary of a railroad Young Men's Christian Association.]

(C) an individual traveling on behalf of a nonprofit organization which provides recreational, housing or other services and benefits for the general welfare of employees of common carriers.

(2) * * *

* * * * * * *

§ 10762. General tariff requirements

(a)—(b) * * *

* * * * * * *

(c)(1)—(2) * * *

* * * * * * *

(3) A notice filed under this subsection shall plainly identify the proposed change or new or reduced rate and indicate its proposed effective date. In the case of a carrier other than a rail carrier *and motor common carrier of passengers with respect to special or charter transportation*, a proposed rate change or a new or reduced rate may not become effective for 30 days after the notice is published, filed, and held open as required under subsections (a) and (b) of this section. In the case of a rail carrier, a proposed rate change resulting in an increased rate or a new rate shall not become effective for 20 days after the notice is published and a proposed rate change resulting in a reduced rate shall not become effective for 10 days after the notice is published, except that a contract authorized under section 10713 of this title shall become effective in accordance with the provisions of such section. *In the case of a motor common carrier of passengers, a proposed rate change resulting in an increased rate or a new rate applicable to special or charter transportation shall not become effective for 30 days after the notice is published, and a proposed rate change resulting in a reduced rate applicable to special or charter transportation shall not become effective for 10 days after the notice is published.*

CHAPTER 109—LICENSING

* * * * * * *

SUBCHAPTER II—OTHER CARRIERS AND MOTOR CARRIER BROKERS

10921. Requirement for certificate, permit, or license.
10922. Certificates of motor and water common carriers.
10923. Permits of motor and water contract carriers and freight forwarders.

10924. Licenses of motor carrier brokers.
10925. Effective periods of certificates, permits, and licenses.
10926. Transfers of certificates and permits.
10927. Security of motor carriers, brokers, and freight forwarders.
10928. Temporary authority for motor and water carriers.
10929. Temporary authority for previously exempt water transportation.
10930. Limitations on certificates and permits.
10931. Motor common carriers providing transportation entirely in one State.
10932. Motor carrier savings provisions.
10933. Authorizing abandonment of freight forwarder service.
10934. Household goods agents.
10935. Discontinuing bus transportation in one State.

* * * * * * *

§ 10922. Certificates of motor and water common carriers

(a) Except as provided in this section and section 10930(a) of this title, the Interstate Commerce Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter [II or] III of chapter 105 of this title as a [motor common carrier of passengers or water common carrier, respectively,] *water common carrier* if the Commission finds that—

(1) the person is fit, willing, and able—

(A) to provide the transportation to be authorized by the certificate; and

(B) to comply with this subtitle and regulations of the Commission; and

(2) the transportation to be provided under the certificate is or will be required by the present future public convenience and necessity.

(b)(1)—(3) * * *

(4)(A) The Commission shall not issue a certificate to provide transportation as a motor common carrier under this section to any person domiciled in a foreign country, or to a motor common carrier owned or controlled by a person or persons domiciled in a foreign country consistent with the findings of paragraph (1) of this subsection, until the President has certified to the Commission that an agreement has been reached and the date on which such agreement is to become effective, pursuant to subparagraph (B) of this paragraph.

(B) The President shall, as appropriate, enter into discussions with appropriate foreign authorities regarding the establishment of agreements with respect to motor carrier transportation between the United States and foreign countries. Such discussions shall be conducted in consultation with the United States Trade Representative, the Department of State, and the Department of Transportation. Such agreements shall provide for fair and equitable treatment for United States motor common carriers.

(C) Whenever an agreement is reached between the United States and a foreign ocuntry regarding motor carrier transportation between the United States and a foreign country, the President shall certify to the Commission that an agreement has been reached and the date on which such agreement is to enter into effect.

(D) When the Commission has received a certification from the President under subparagraph (C) of this paragraph and after the agreement has become effective, the Commission shall issue a certificate

to provide transportation as a motor common carrier under this section to any person domiciled in a foreign country which is a party to such agreement, or to a motor common carrier owned or controlled by a person domiciled in a foreign country which is a party to such agreement, consistent with the findings of paragraph (1) of this subsection, except where the Commission determines under section 10925(b) of this title that the government, motor carrier authorities, or foreign motor carriers of any foreign country or political subdivision of such foreign country have imposed restrictions on access of United States motor carriers to foreign markets which are inconsistent with agreements entered into under subparagraph (B) of this paragraph.

(E) This paragraph shall apply only to foreign persons who are from countries contiguous to the United States.

[(4)](*5*) The provisions of paragraph (1) of this subsection (other than subparagraph (A)) shall not apply to applications under this subsection for authority to provide—

(A) transportation to any community not regularly served by a motor common carrier of property certified under this section;

(B) transportation services which will be a direct substitute for abandoned rail service to a community if such abandonment results in such community not having any rail service and if such application is filed within 120 days after such abandonment has been approved by the Commission;

(C) transportation for the United States Government of property other than used household goods, hazardous or secret materials, and sensitive weapons and munitions;

(D) transportation of shipments weighing 100 pounds or less is transported in a motor vehicle in which no one package exceeds 100 pounds; and

(E) transportation by motor vehicle of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers if—

(i) such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations; and

(ii) after issuance of the certificate, such transportation (measured by tonnage) does not exceed, on an annual basis the transportation provided by the motor vehicle (measured by tonnage, which is exempt from the jurisdiction of the Commission under section 1052(a)(6) of this title and the owner of the motor vehicle certifies to the Commission annually that he is complying with the provisions of this clause and provides to the Commission such information and records as the Commission may require.

[(5)](*6*) Notwithstanding any other provision of law, any carrier holding authority under paragraph (4)(D) of this subsection operating one or more commercial motor vehicles with a gross vehicle weight rating of 10,000 pounds or more shall be subject to commercial motor vehicle safety regulations promulgated by the Secretary of Transportation pursuant to this title with respect to its entire opera-

tions, including the operations of commercial motor vehicles with gross vehicle weight ratings less than 10,000 pounds.

[(6)](7) The Commission shall streamline and simplify, to the maximum extent practicable, the process for issurance of certificates to which the provisions of paragraph (4) (E) of this subsection apply.

[(7)](8) No motor common carrier of property may protest an application to provide transportation filed under this subsection unless—

(A) (i) it possesses authority to handle, in whole or in part, the traffic for which authority is applied;

(ii) it is willing and able to provide service that meets the reasonable needs of the shippers involved; and

(iii) it has performed service within the scope of the application during the previous 12-month period or has, actively in good faith solicited service within the scope of the application during such period;

(B) it has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

(C) the Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 1010(a) of this title.

[(8)](9) No motor contract carrier of property may protest an application to provide transportation filed under this subsection

[(9)](10) Notwithstanding the provisions of paragraph (4) of this subsection, the provisions of paragraph (1) of this subsection (other than subparagraph (A)) shall not apply to applications under this subsection for authority to provide transportation for the United States Government of used household goods which transportation is incidental to a pack and crate service on behalf of the Department of Defense.

(c) (1) Except as provided in this section—

(A) A certificate shall be issued by the Commission to a person authorizing that person to provide regular-route transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers and a certificate shall be issued to a recipient of governmental financial assistance for the purchase or operation of buses, or to an operator for such a recipient, authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier of passengers, if the Commission finds that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized is not consistent with the public interest.

(B) For all applications for authority except those under clause (A) of this paragraph, the Commission shall issue a certificate to a person authorizing that person to provide transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title as a motor common carrier

of passengers if the Commission finds that the person is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission.

(2)(A) The Commission shall issue a certificate to a person authorizing that person to provide regular-route transportation entirely in one State as a motor common carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier has authority on the effective date of the Bus Regulatory Reform Act of 1982 to provide interstate transportation of passengers if the Commission finds that the person is fit, willing, and able to provide the intrastate transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized would directly compete with a commuter bus operation and it would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

(B) The Commission shall issue a certificate to a person authorizing that person to provide regular-route transportation entirely in one State as a motor common carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier has been granted authority or will be granted authority after the effective date of the Bus Regulatory Reform Act of 1982 to provide interstate transportation of passengers if the Commission finds that the person is fit, willing, and able to provide the intrastate transportation to be authorized by the certificate and to comply with this subtitle and regulations of the Commission, unless the Commission finds, on the basis of evidence presented by any person objecting to the issuance of the certificate, that the transportation to be authorized is not consistent with the public interest.

(C) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and if a city within the commercial zone, as defined in section 10526(b)(1) of this title, is served by that person in regular-route service as a motor common carrier of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title.

(D) Subject to subparagraph (F) of this paragraph, any intrastate transportation authorized by issuance of a certificate under this paragraph shall be deemed to be transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this subtitle. Upon issuance of such certificate, the carrier shall establish initial rates, rules, and practices applicable to such transportation to the same extent and in the same manner as a motor common carrier of passengers providing transportation subject to the jurisdiction of the Commission under such subchapter establishes rates, rules, and practices applicable to such interstate transportation. Any such initial rate, rule, or practice shall be subject to the provision of chapter 107 of this

subtitle as if such rate, rule, or practice were related to interstate transportation.

(E) Not later than 30 days after the date on which a motor common carrier of passengers first begins providing transportation entirely in one State pursuant to a certificate issued under this paragraph, the carrier shall take all action necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation.

(F) Transportation entirely in one State authorized by issuance of a certificate under this paragraph shall remain subject to the jurisdiction of the Commission, and initial rates, rules, and practices applicable to such transportation established under subparagraph (D) of this paragraph shall remain in effect, until permanent rates, rules, and practices applicable to such transportation are established under the laws of such State.

(G) The Commission shall take final action upon an application filed under subsection (c)(2)(A) of this section for authority to provide transportation entirely in one State not later than 90 days after the date the application is filed with the Commission.

(H) This paragraph shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

(I) Notwithstanding subparagraph (F) of this paragraph, intrastate transportation authorized under this paragraph may be suspended or revoked by the Commission under section 10925 of this title.

(3) In making any findings relating to public interest under paragraphs (1)(i) and (2)(B) of this subsection, the Commission shall consider, to the extent applicable—

(A) the transportation policy of section 10101(a) of this title;

(B) the value of competition to the traveling and shipping public;

(C) the effect of issuance of the certificate on motor carrier of passenger service to small communities; and

(D) whether issuance of the certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the regular-route passenger service which such carrier provides over its entire regular-route system. Diversion of revenue or traffic from a motor common carrier of passengers in and of itself shall not be sufficient to support a finding that issuance of the certificate would impair the ability of the carrier to provide a substantial portion of the regular-route passenger service which the carrier provides over its entire regular-route scheduled system.

(4) The provisions of paragraph (1) of this subsection relating to the Commission finding that transportation to be authorized by issuance of a certificate is not consistent with the public interest shall not apply to any application under this subsection for authority to provide—

(A) interstate transportation service to any community not regularly served by a motor common carrier of passengers under this section;

(B) interstate transportation service which will be a substitute for discontinued rail or commercial-air passenger service to a community if such discontinuance results in such community not

having any rail and commercial-air passenger service and if such application is filed within 180 days after such discontinuance becomes effective; and

(C) interstate transportation service to any community with respect to which the only motor common carrier of passengers providing interstate transportation service to such community applies for authority to discontinue providing such interstate service under section 10925(b) of this subchapter or applies for permission to reduce its level of intrastate service to such community under section 10935 of this subchapter.

(5) The Commission may not make any finding under paragraphs (1) and (2) of this subsection which is based upon general findings developed in rulemaking proceedings.

(6) The requirement that persons issued certificates under this subsection be fit, willing, and able means safety fitness and proof of insurance pursuant to the minimum financial responsibility requirements of section 18 of the Bus Regulatory Reform Act of 1982.

(7) No motor common carrier of passengers may protest an application to provide transportation filed under this subsection or a request to remove an operating restriction under section 10922(i)(4) of this title unless—

(A)(i) it possesses authority to handle, in whole or in part, the traffic for which authority is applied;

(ii) it is willing and able to provide service that meets the reasonable needs of the traveling public; and

(iii) it has performed service within the scope of the application during the previous 12-month period or has, actively in good faith, solicited service within the scope of the application during such period;

(B) it has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

(C) the Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in section 10101(a) of this title.

(8) No motor contract carrier of passengers may protest an application to provide transportation filed under this subsection.

(9) For purposes of this section, authority under this subsection to provide special or charter transportation of passengers by motor vehicle includes authority to provide such transportation as round-trip service and as one-way service if such one-way service may be provided as part of a round-trip movement involving the same passengers and air, rail, or water transportation or any combination of air, rail, or water transportation.

[(c)] *(d)* A person must file an application with the Commission for a certificate to provide transportation, as a motor common carrier or water common carrier. The Commission may approve any part of the application or deny the application. The application must—

(1) be under oath;

(2) contain information required by Commission regulations; and

(3) be served on persons designated by the Commission.

[(d)] (*e*) (1) Subject to section 10927(a) of this title, each certificate issued to a person to provide transportation as a motor common carrier shall specify—

(A) the transportation to be provided by the carrier;

(B) any of the regular routes over which, any of the places between which, and off-route places at which, the carrier may provide transportation; and

(C) if transportation is not over regular routes or between specified places, the area in which the carrier may provide transportation.

(2) Under regulations of the Commission, a motor common carrier may occasionally deviate from the regular routes, or the places specified in the certificate, or both.

(3) If a motor common carrier transports passengers, the Commission may authorize transportation of the passengers only over a regular route and between specified places, except to the extent the carrier is authorized to provide special or charter transportation.

[(4) A certificate of a motor common carrier to transport passengers may include authority to transport—

[(A) newspapers, baggage of passengers, express, or mail in the same motor vehicle with the passengers; and

[(B) baggage of passengers in a separate motor vehicle.]

(*4*) *A certificate of a motor common carrier to transport passengers shall be deemed to include permissive authority to transport newspapers, baggage of passengers, express packages, or mail in the same motor vehicle with the passengers, or baggage of passengers in a separate motor vehicle.*

[e] (*f*) Each certificate issued to a person to provide transportation as a water common carrier shall specify each route over which, and each port between which, the carrier may provide transportation.

[f] (*g*) (1) A motor common carrier may provide transportation under a certificate only if the carrier complies with conditions the commission finds were required by public convenience and necessity, including conditions—

(A) on extending routes of the carrier; and

(B) to carry out requirements established by the Commission under this subtitle.

(2) The Commission may prescribe necessary conditions under which a water common carrier provides transportation, including conditions on extending routes of the carrier.

(3) The Commission may prescribe conditions when the certificate is issued and at any time thereafter. The Commission may not prescribe a condition preventing—

(A) a motor common carrier or water common carrier from adding to its equipment and facilities or its transportation within the scope of the certificate to satisfy business development and public demand; or

(B) a water common carrier, if the carrier has authority to provide transportation over completed parts of a waterway project authorized under law, from extending its transportation over the uncompleted parts of the project when opened for navigation to satisfy business development and public demand.

[g](*h*) A certificate issued under this section does not confer a proprietary or exclusive right to use the public highways or public waterways.

[h](*i*)(1) Not later than 180 days after the date of enactment of this subsection, the Commission shall—

(A) eliminate gateway restrictions and circuitous route limitations imposed upon motor common carriers of property; and

(B) implement, by regulation, procedures to process expeditiously applications of individual motor carriers of property seeking removal of operating restrictions in order to—

(i) reasonably broaden the categories of property authorized by the carrier's certificate or permit;

(ii) authorize transportation or service to intermediate points on the carrier's routes;

(iii) provide round-trip authority where only one-way authority exists;

(iv) eliminate unreasonable or excessively narrow territorial limitations; or

(v) eliminate any other unreasonable restriction that the Commission deems to be wasteful of fuel, inefficient, or contrary to the public interest.

(2) The regulations promulgated by the Commission pursuant to paragraph (1)(B) of this subsection shall provide for final Commission action upon an application not later than 120 days after the date the application is filed with the Commission, except that in extraordinary circumstances, the Commission may extend such deadline for a period of not to exceed 90 additional days. Such regulations shall also provide for notice and the opportunity for interested parties to comment, but need not provide for oral evidentiary hearings. In granting or denying applications under paragraph (1)(B) of this subsection, the Commission shall (A) consider, among other things, the impact of the proposed restriction removal upon the consumption of energy resources, potential cost savings and improved efficiency, and the transportation policy set forth in section 10101(a) of this title, and (B) give special consideration to providing and maintaining service to small and rural communities and small shippers.

(3) on the effective date of the Bus Regulatory Reform Act of 1982, a certificate to provide interstate transportation of passengers issued under this section shall be deemed to authorize (but not require)—

(A) round-trip operations where only one-way authority exists; and

(B) special and charter transportation from all points in a political subdivision of a State in any case in which special and charter transportation authority is limited to one or more points of origin in such political subdivision.

(4) Upon request of the holder of a certificate, the Commission shall within 90 days remove any operating restriction imposed on the certificate in order to authorize interstate transportation or service to intermediate points on any route covered by the certificate unless the Commission finds, on the basis of evidence presented by a person objecting to the removal of such an operating restriction, that the resulting interstate transportation directly competes with a consumer bus opera-

tion and it will have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

[(i)] *(j)(1)* A person holding [(1)] *(A)* a certificate issued under subsection (b) of this section to provide transportation as a motor common carrier of property, and [(2)] *(B)* a permit issued under section 10923 of this subchapter to provide transportation as a motor contract carrier of property, may transport property under the certificate in the same motor vehicle and at the same time as property under the permit.

(2)(A) Subject to the provisions of this paragraph, a motor common carrier of passengers who has authority under this section to provide special or charter transportation of passengers and to provide regular-route transportation of passengers may transport the special or charter passengers in the same motor vehicle with regular-route passengers.

(B) Subparagraph (A) of this paragraph shall only apply to transportation of passengers entirely in a State if the motor common carrier of passengers has authority under the laws of such State to provide within such State special or charter transportation of passengers and regular-route transportation of passengers and if the laws of such State and the certificate, permit, or other authority under which such carrier provides intrastate transportation in such State authorizes such carrier to transport special or charter passengers in the same motor vehicle with regular-route passengers.

(C) Special or charter transportation of passengers may only be provided under subparagraph (A) of this paragraph in the same motor vehicle as regular-route transportation of passengers if the mixing of such passengers does not interfere with the obligation of the carrier to comply with section 11101 of this subtitle.

(3) Subject to such regulations as the Commission may issue, a person who has authority under this section to provide charter transportation of passengers may transport groups of charter passengers in the same motor vehicle at the same time.

[(1)] *(k)* A motor common carrier of property may deliver to or receive from a rail carrier a trailer moving in trailer-on-flat-car service at any point on the route of the rail carrier if the motor carrier is authorized to serve the origin and destination points of the traffic.

(l)(1) No certificate to provide transportation as a motor common carrier shall be issued under this section to any person from a political subdivision of a foreign country unless such political subdivision or such country grants authority to persons from the United States to provide transportation by motor vehicle for compensation in such political subdivision or country.

(2) This subsection shall only apply to foreign persons who are from countries contiguous to the United States.

§ 10923. Permits of motor and water contract carriers and freight forwarders

(a) * * *

(b)(1) * * *

[(2) In deciding whether to approve the application of a person for a permit as a motor contract carrier of passengers, the Commission shall consider—

[(A) the number of shippers to be served by the carrier;
[(B) the nature of the transportation proposed to be provided;
[(C) the effect that granting the permit would have on the transportation of carriers protesting the granting of the permit;
[(D) the effect that denying the permit would have on the person applying for the permit, its shippers, or both; and
[(E) the changing character of the requirements of those shippers.]

(2) The provisions of paragraph (2) of subsection (a) of this section shall not apply to applications under this section for authority to provide transportation as a motor contract carrier of passengers. The requirement that persons issued permits under this section as motor contract carriers of passengers be fit, willing, and able means safety fitness and proof of insurance pursuant to the minimum financial responsibility requirements of section 18 of the Bus Regulatory Reform Act of 1982.

(3)—(7) * * *
(c)—(e) * * *

§ 10924. Licenses of motor carrier brokers

(a) The Interstate Commerce Commission shall issue, subject to section 10927(b) of this title, a license to a person authorizing the person to be a broker for transportation of [passengers or] household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, if the Commission finds that—

(1) the person is fit, willing, and able—
(A) to be a broker for transportation to be authorized by the license; and
(B) to comply with this subtitle and regulations of the Commission; and

(2) the transportation for which the person is to be a broker will be consistent with the public interest and the transportation policy of section 10101 of this title.

(b)—(d) * * *

(e) Commission regulations shall provide for the protection [of travelers and] shippers by motor vehicle, to be observed by brokers.

(f) The Commission may impose on brokers of passengers such requirements for bonds or insurance or both as the Commission determines are needed to protect passengers and carriers dealing with such brokers.

§ 10925. Effective periods of certificates, permits, and licenses

(a) * * *

(b)(1) Whenever the Commission, upon complaint or on its own initiative, determines that a foreign government, motor carrier authority or foreign motor carrier imposes restrictions on access of a United States motor carrier to foreign markets which are inconsistent with any agreement entered into under section 10922(b)(4) of this title, the Commission may take such action as may be necessary to encourage compliance with any such agreement. Such actions may include the denial, transfer, alteration, modification, amendment, cancellation, suspension, limitation, or revocation of any foreign motor

carrier permit, certificate, license or tariff pursuant to the powers of the Commission under this title.

(2) In considering any complaints or in any proceedings on its own initiative under this subsection, the Commission shall solicit the views of the United States Trade Representative, the Department of State, and the Department of Transportation. In addition, the Commission shall provide any affected motor carrier or foreign motor carrier with reasonable notice and opportunity to file written evidence and argument on the complaint.

(3) Any action by the Commission under this subsection shall be presented to the President for review. The President shall have the right to disapprove any such action on the basis of foreign policy or national defense considerations within 60 days after presentation of the action. Any such action which is disapproved by the President shall be null and void. Any such action which is not disapproved within 60 days after presentation to the President shall take effect as action of the Commission.

(4) The Commission shall exercise its duties under this section consistent with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries.

[(b)**]** *(c)* On application of the holder of a certificate, permit, or license, the Interstate Commerce Commission may amend or revoke any part of the certificate, permit, or license. On complaint or on its own initiative and after notice and an opportunity for a proceeding, the Commission may suspend, amend, or revoke any part of a certificate, permit, or license—

(1) if a motor carrier, broker, or freight forwarder, for willful failure to comply with this subtitle, a regulation or order of the Commission, or a condition of its certificate, permit, or license; and

(2) if a water carrier, for willful failure to comply with section 10701(a) or 11101(a) of this title, a regulation or order of the Commission, or a condition of its certificate or permit.

[(c)**]** *(d)* (1) Except on application of the holder, the Commission may revoke a certificate or permit of a motor carrier or freight forwarder, or a license of a broker, only after the Commission has issued an order to the holder under section 11701 of this title requiring compliance with this subtitle, a regulation of the Commission, or a condition of the certificate, permit, or license of the holder, and the holder willfully does not comply with the order.

(2) Except on application of the holder, the Commision may suspend, amend, or revoke a certificate or permit of a water carrier only after the Commission has issued an order to the holder under section 11701 of this title requiring compliance with section 10701(a) or 11101 (a) of this title, and the holder willfully does not comply with the order.

(3) The Commission may act under paragraph (1) or (2) of this subsection only after giving the holder of the certificate, permit, or license at least 30 days to comply with the order.

[(d)**]** *(e)* (1) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title, the Commission may

suspend a certificate of a motor carrier, a permit of a freight forwarder, or a license of a broker—

(A) if a motor carrier or broker, for failure to comply with section 10701, 10702, 10761, 10762, 10924(e), or 10927 (b) or (d) of this title, or an order or regulation of the Commission prescribed under those sections; and

(B) if a freight forwarder, for failure to comply with section 10762 or 10927 (c) or (d) of this title, or an order or regulation of the Commission prescribed under those sections.

(2) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, upon petition by the Secretary of Transportation, the Commission may suspend a certificate or permit of a motor carrier of passengers if the Commission finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.

[(2)] *(3)* The Commission may suspend the certificate, permit, or license only after it gives notice of the suspension to the holder at least 15 days before the date the suspension is to begin. The suspension remains in effect until the holder complies with those applicable sections *or, in the case of a suspension under paragraph (2) of this subsection, until the Commission revokes such suspension.*

[(e)] *(f)* (1) On application of a motor contract carrier [of property] who holds a permit issued under section 10923 of this title or on complaint of a competing motor common carrier [of property] who holds a certificate under [section 10922(b) *section 10922* of this title, or on its own initiative, if the Commission, after notice and an opportunity for a proceeding, determines that the operations under the permit or any part thereof—

(A) do not conform with the operations of a motor contract carrier [of property]; and

(B) are those of a motor common carrier [of property];

the Commission may amend or revoke such permit or part thereof to conform the operations under such permit or part thereof to the operations of a motor contract carrier [of property].

(2) The Commission may issue in place of any permit or part thereof revoked under this subsection a certificate under [section 10922(b) *section 10922* of this title which authorizes the holder of such certificate to provide [transportation] as a motor common carrier [of property of the same property] *the same type of transportation* between the same points or within the same territory as authorized in the permit or part thereof.

* * * * * * *

§ 10927. Security of motor carriers, brokers, and freight forwarders

(a)(1) The Interstate Commerce Commission may issue a certificate or permit to a motor carrier under section 10922 or 10923 of this title only if the carrier files with the Commission a bond, insurance policy, or other type of security approved by the Commission, in an amount not less than such amount as the Secretary of Transportation prescribes pursuant to, or as is required by, the provisions of section 30 of the Motor Carrier Act of 1980, *in the case of a motor carrier of property, or section 18 of the Bus Regulatory Reform Act of 1982, in*

the case of a motor carrier of passengers. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the carrier for bodily injury to, or death of, an individual resulting from the negligent operation, maintenancce, or use of motor vehicles under the certificate or permit, or for loss or damage to property (except property referred to in paragraph (3) of this subsection), or both. A certificate or permit remains in effect only as long as the carrier satisfies the requirements of this paragraph.

(2)—(3) * * *

(b)—(d) * * *

§ 10928. Temporary authority for motor and water carriers

(a) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Interstate Commerce Commission may grant a [motor carrier of passengers or] water carrier temporary authority to provide transportation to a place or in an area having, respectively, no [motor carrier of passengers or] water carrier capable of meeting the immediate needs of the place or area. Unless suspended or revoked, the Commission may grant the temporary authority for not more than 180 days. A grant of temporary authority does not establish a presumption that permanent authority to provide transportation will be granted under this subchapter.

(b) (1) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Commission, pursuant to such regulations as the Commission may issue, may grant a motor carrier [of property] temporary authority to provide transportation to a place or in an area having no motor carrier [of property] capable of meeting the immediate needs of the place or area. Unless suspended or revoked, the Commission may grant the temporary authority for not more than 270 days. A grant of temporary authority does not establish a presumption that permanent authority does not establish a presumption that permanent authority to provide transportation will be granted under this subchapter.

(2) The Commission shall take final action upon an application filed under this subsection no later than 90 days after the date the application is filed with the Commission.

(c) (1) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Commission, pursuant to such regulations as the Commission may issue, may grant a motor carrier [of property] emergency temporary authority to provide transportation to a place or in an area having no motor carrier [of property] capable of meeting the immediate needs of the place or area if the Commission determines that, due to emergency conditions, there is not sufficient time to process an application for temporary authority under subsection (b) of this section. Unless suspended or revoked, the Commission may grant the emergency temporary authority for not more than 30 days, and the Commission may extend such authority for a period of not more than 90 days *and, in addition, in the case of a motor carrier of passengers, the Commission may extend such authority for a period of more than 90 days but not more than 180 days if no other motor carrier of passengers is providing transportation to the place or in the area.* A grant of emergency temporary authority does

not establish a presumption that permanent authority to provide transportation will be granted under this subchapter.

§ *10934. Household goods agents*

* * * * * * *

§ *10935. Discontinuing bus transportation in one State*

(a) When a motor common carrier of passengers having intrastate authority under the laws of a State, and interstate authority under a certificate issued under section 10922 of this subchapter, to provide transportation over any route to any point in such State has proposed to discontinue providing transportation over such route to such point or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays) and the carrier has requested the department, agency, or instrumentality of such State having jurisdiction over granting such discontinuance or reduction for permission to discontinue such intrastate transportation or to reduce its level of service to a level which is less than one trip per day (excluding Saturdays and Sundays) and the request has been denied (in whole or in part) or such department, agency, or instrumentality has not acted finally (in whole or in part) on the request by the 120th day after the carrier made the request, the carrier may petition the Commission for such permission.

(b) When a petition is filed under subsection (a) of this section, the carrier shall certify that he has notified (1) the Governor of the State in which transportation is provided, (2) the State authority having jurisdiction over granting discontinuances of transportation by motor common carriers of passengers and reductions in levels of service by such carriers, (3) local governments having jurisdiction over areas which would be affected if such petition is granted, and (4) such other interested persons as the Commission may specify by regulation.

(c) Any person (including a department, agency, or instrumentality of a State or local government) may object to the Commission to the granting of permission to any motor common carrier of passengers to discontinue or reduce transportation under this section.

(d) If no person objects under subsection (c) of this section to the granting of permission to discontinue or reduce transportation under this section within 20 days after the carrier files with the Commission the petition for such discontinuance or reduction, the Commission shall grant such permission at the end of such 20-day period.

(e)(1) Subject to paragraph (2) of this section, if, within 20 days after a carrier files a petition for permission to discontinue providing intrastate transportation over any route to any point or to reduce its level of service over such route to such point to a level which is less than one trip per day (excluding Saturdays and Sundays), any person objects under subsection (c) of this section to the Commission to the granting of such permission, the Commission shall grant such permission unless the Commission finds, on the basis of evidence presented by the person objecting to the granting of such permission, that such discontinuance or reduction is not an unreasonable burden on interstate commerce. For the purposes of this subsection, continuance of the transportation would not constitute an unreasonable burden on interstate commerce only if discontinuance or reduction of such service is not consistent with the public interest and the interstate and intrastate revenues from such service are adequate to cover the vari-

able costs of operating the service proposed to be discontinued or reduced.

(2) The Commission shall only grant permission to a carrier to discontinue intrastate transportation over any route to any point under this subsection if such carrier has applied for authority to discontinue its interstate transportation over such route to such point under section 10925(b) of this subchapter and the Commission has granted or will grant such authority.

(3) If any person objects under subsection (c) of this section to the granting of permission to discontinue or reduce transportation under this section within 20 days after the carrier files with the Commission the petition for such discontinuance or reduction, the carrier, within 15 days after the filing of such objection with the Commission, shall furnish to the Commission and to objecting persons—

(A) an estimate of the annual subsidy required, if any, to continue the service;

(B) traffic, revenue, and other data necessary to determine the amount of annual financial assistance, if any, which would be required to continue the service; and

(C) such other information as the Commission may require by regulation.

The Commission shall take final action upon such petition not later than 75 days after the date the carrier files such petition.

(f) Before a discontinuance or reduction in level of service proposed in a petition filed by a carrier under subsection (a) of this section has become effective, the Commission may order the carrier to continue any part of the intrastate transportation for not to exceed the 150-day period beginning on the date the carrier files such petition with the Commission.

(g) In making a finding under subsection (1)(e) of this section, the Commission shall consider, to the extent applicable:

(1) the national transportation policy of section 10101 of this title;

(2) whether the motor common carrier of passengers has received an offer of, or is receiving, financial assistance to provide the transportation to be discontinued or reduced from a financially responsible person (including a governmental authority); and

(3) in the case of a petition to discontinue transportation to any point, whether the transportation is the last motor carrier of passenger service to such point and whether a reasonable alternative to such service is available.

(h) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to discontinuance or reduction in the level of intrastate service by a motor common carrier of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title corresponding to an interstate service initiated pursuant to the provisions of section 10922(c)(4) of this title except to the extent that notice of discontinuance or reduction in service, not in excess of 30 days, may be required.

(i) This section shall not apply to any carrier owned or controlled by a State or local government.

CHAPTER 111—OPERATIONS OF CARRIERS

SUBCHAPTER I—GENERAL REQUIREMENTS

Sec.
11101. Poviding transportation and service.
11102. Classification of carriers.
11103. Use of terminal facilities.
11104. Switch connections and tracks.
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11106. Identification of motor vehicles.
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11108. Water carriers subject to unreasonable discrimination in foreign transportation.
11109. Loading and unloading motor vehicles.
11110. Household goods carrier operations.
11111. Use of citizen band radios on buses.

§ *11111. Use of citizen band radios on buses*

(a) (1) A motor carrier of passengers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title shall allow the operator of any motor vehicle providing such transportation to temporarily install and operate a citizen band radio in such vehicle if the Secretary of Transportation issues a rule or regulation which recommends that operators of such vehicles be allowed to temporarily install and operate such radios in such vehicles.

(2) Citizen band radios installed and operated in motor vehicles providing transportation of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 10o of this title shall be installed and operated in accordance with the guidelines established by the Secretary of Transportation under section 25(c) of the Bus Regulatory Reform Act of 1982.

(b) The Commission shall issue such regulations as it considers necessary to carry out this section.

CHAPTER 113—FINANCE

SUBCHAPTER I—CARRIER SECURITIES, EQUIPMENT TRUSTS, AND SECURITY INTERESTS

Sec.
11301. Authority of certain carriers to issue securities and assume obligations and liabilities.
[11302. Issuance of securities and assumption of obligations and liabilities by motor carriers.]
11303. Equipment trusts; recordation, evidence of indebtedness.
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SUBCHAPTER II—OWNERSHIP

11321. Limitation on ownership of certain water carriers.
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11361. Scope of authority: changes in financial structure.
11362. Criteria for approval and authority.
11363. Assent of holders of securities and certain other instruments.
11364. Procedure.
11365. Effect of change on other persons.
11366. Reports.
11367. Application of other laws.

* * * * * * *

[§ 11302. Issuance of securities and assumption of obligations and liabilities by motor carriers

[(a) Except as provided in this section, section 11301 of this title applies to—

[(1) motor carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title;

[(2) corporations organized to provide transportation as carriers subject to the jurisdiction of the Commission under that subchapter; and

[(3) corporations authorized by the Commission to acquire control of at least one motor carrier subject to its jurisdiction under that subchapter.

[(b) Section 11301 of this title does not apply when the total value of capital stock (or principal amount of other securities to be issued) and the value of capital stock and principal amount of other securities then outstanding is not more than $5,000,000, or to notes of a maturity of not more than 2 years that aggregate not more than $1,000,000. Notes that, with other outstanding notes of a maturity of not more than 2 years, aggregate that amount may be issued without regard to the percentage limitations applicable under section 11301(b)(2) of this title. The value of capital stock having no par value is the fair market value on the date of issue of that stock, and the value of capital stock that has a par value is the fair market value on the date of issue or the par value, whichever is greater.

[(c) This section does not apply to the United States Government, a State, or an instrumentality or political subdivision of one of them.]

§ 11341. Scope of authority

(a) The authority of the Interstate Commerce Commission under this subchapter is exclusive. A carrier or corporation participating in or resulting from a transaction approved by *or exempted by* the Commission under this subchapter may carry out the transaction, own and

operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in that *approved or exempted* transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction. However, if a purchase and sale, a lease, or a corporate consolidation or merger is involved in the transaction, the carrier or corporation may carry out the transaction only with the assent of a majority, or the number required under applicable State law, of the votes of the holders of the capital stock of that corporation entitled to vote. The vote must occur at a regular meeting, or special meeting called for that purpose, of those stockholders and the notice of the meeting must indicate its purpose.

(b) * * *

§ 11343. Consolidation, merger, and acquisition of control

(a)—(d) * * *

(e) (1) Notwithstanding any provisions of this title, the Interstate Commerce Commission, in a matter related to a motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, may exempt a person, class of persons, transaction, or class of transactions from the merger, consolidation, and acquisition of control provisions of this subchapter if the Commission finds that the application of those provisions of this subchapter—

(A) is not necessary to carry out the transportation policy of section 10101 of this title, and

(B) either (i) the transaction is of limited scope, or (ii) the application of the provisions of this subchapter is not needed to protect shippers from the abuse of market power.

(2) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of the provisions of this section to the person, class of persons, or transportation is necessary to carry out the transportation policy of section 10101 of this title.

[§ 11345 a. Consolidation, merger, and acquisition of control: motor carrier of property procedure]

§ 11345a. Consolidation, merger, and acquisition of control: motor carrier procedure

(a) If a motor carrier [of property] providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title is involved in a proposed transaction under section 11343 of this title, this section and section 11344 of this title also apply to the transaction. The Commission shall publish notice of the application in the Federal Register by the end of the 30th day after the application is filed with the Commission. However, if the application is incomplete, the Commission shall reject it by the end of that period. The order of rejection is a final decision of the Commission under section 10322 of this title.

(b)—(d) * * *

§ 11344. Consolidation, merger, and acquisition of control: general procedure and conditions of approval

(a) * * *

(b) (*1*) In a proceeding under this section which involves the merger or control of at least two class I railroads, as defined by the Commission, the Commission shall consider at least the following:

[(1)](*A*) the effect of the proposed transaction on the adequacy of transportation to the public.

[(2)](*B*) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

[(3)](*C*) the total fixed charges that result from the proposed transaction.

[(4)](*D*) the interest of carrier employees affected by the proposed transaction.

[(5)](*E*) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

(*2*) *In a proceeding under this section which involves only carriers of passengers providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title, the Commission shall consider at least the following:*

(A) the effect of the proposed transaction on the adequacy of transportation to the public.

(B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

(C) the total fixed charges that result from the proposed transaction.

(D) the interest of carrier employees affected by the proposed transaction.

(c) * * *

(d) In a proceeding under this section which does not involve the merger or control of at least two class I railroads, as defined by the Commission, the Commission shall approve such an application unless it finds that—

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In making such findings, the Commission shall, with respect to any application that is part of a plan or proposal developed under 5(a)–(d) of the Department of Transportation Act (49 U.S.C. 1654(a)–(d)), accord substantial weight to any recommendations of the Secretary of Transportation. *The provisions of this subsection do not apply to any proceeding under this section which involves only carriers of passengers providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title.*

(e) * * *

§ 11501. Interstate Commerce Commission authority over intrastate transportation

(a)—(d) * * *

(e) (1) The Commission shall prescribe any rate, rule, or practice applicable to transportation provided entirely in one State by a motor common carrier of passengers providing transportation subject to jurisdiction of the Commission under subchapter II of chapter 105 of this title—

(A) if the carrier has requested the department, agency, or instrumentality of such State having jurisdiction over such rate, rule, or practice for permission to establish such rate, rule, or practice and the request has been denied (in whole or in part) or the State authority has not acted finally (in whole or in part) on the request by the 120th day after the carrier made the request; and

(B) if the Commission finds that the rate, rule, or practice in effect and applicable to such intrastate transportation causes unreasonable discrimination against or imposes an unreasonable burden on interstate or foreign commerce.

(2) For purposes of paragraph (1)(B) of this subsection, there shall be a rebuttable presumption that—

(A) any rate, rule, or practice applicable to transportation provided by a motor common carrier of passengers entirely in one State imposes an unreasonable burden on interstate commerce if the Commission finds that—

(i) such rate, rule, or practice results in the carrier charging a rate for such transportation which is lower than the rate such carrier charges for comparable interstate transportation of passengers;

(ii) on the basis of evidence presented by the carrier, that as a result of such rate, rule, or practice such carrier does not receive revenues from such transportation which exceed the variable costs of providing such transportation; or

(iii) the department, agency, or instrumentality of such State having jurisdiction over such rate, rule, or practice failed to act finally (in whole or in part) on the request of the carrier to establish such rate, rule, or practice by the 120th day after the date the carrier made the request; and

(B) any rate applicable to transportation entirely in one State imposes an unreasonable burden on interstate commerce if the Commission finds that the most recent general rate increase applicable to transportation provided by motor common carriers of passengers in such State is less than the most recent general rate increase applicable to interstate transportation provided by motor common carriers of passengers under this subtitle.

(3)(A) A motor common carrier of passengers must file an application with the Commission for prescription under this subsection of a rate, rule, or practice applicable to transportation provided entirely in one State by such carrier. When such application is filed with the Commission, the carrier shall certify that he has notified (i) the Governor of such State, (ii) the department, agency, or instrumentality of such State which denied, or failed to take action on, the request of such carrier related to such rate, rule, or practice, and (iii) such other inter-

ested persons as the Commission may specify by regulation. The Commission shall take final action on any such application not later than 60 days after such application is filed with the Commission.

(B) The Commission shall establish, by regulation, procedures for processing applications under this subsection.

(4) This subsection shall not apply to any carrier owned or controlled by a State or local government.

(5) No State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to scheduling of interstate or intrastate transportation provided by motor common carrier of passengers subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title on an authorized interstate route or relating to any reduction in the rates for such transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required. This provision shall not apply to intrastate commuter service.

[(e)](*f*) The Commission may take action (*1*) under this section only after a full hearing, *or (2) with respect to a rate, rule, or practice of a motor common carrier of passengers, in accordance with the procedures established by the Commission under subsection (e) (3) (B) of this section.* Action of the Commission under this section supersedes State law or action taken under State law in conflict with the action of the Commission.

§ 11503a. Tax discrimination against motor carrier transportation property

(a) In this section—

(1) "assessment" means valuation for a property tax levied by a taxing district;

(2) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

(3) "motor carrier transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a motor carrier [of property] providing transportation in interstate commerce whether or not such transportation is subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title; and

(4) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b)—(c) * * *

§ 11504. Withholding State and local income tax by certain carriers

(a)—(b) * * *

(c) (1)—(2) * * *

(3) This subsection applies to pay of a master, officer, or [seaman] *sailor* who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal or noncontiguous trade or in the fisheries of the United States.

(d) * * *

§ 11702. Enforcement by the Interstate Commerce Commission

(a) The Interstate Commerce Commission may bring a civil action—

(1) * * *

(2) to enforce section 10527 or 10930 or 11109 *or 11111* or 11323 of this title, or subchapter III of chapter 113 of this title and to compel compliance with the order of the Commission under any of those sections and that subchapter;

(3)—(6) * * *

(b) * * *

§ 11711. Dispute settlement program for household goods carriers

(a)—(e) * * *

(f) The provisions of this section shall apply only in the case of collect-on-delivery transportation of those types of household goods described in section [10102(10)(A)] *10102 (11)(A)* of this title.

* * * * * * *

§ 11901. General civil penalties

(a)—(f) * * *

(g) A person required to make a report to the Commission, answer a question, or make, prepare, or preserve a record under this subtitle concerning transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title, or an officer, agent, or employee of that person that (1) does not make the report, (2) does not specifically, completely, and truthfully answer the question, (3) does not make, prepare, or preserve the record in the form and manner prescribed by the Commission, or (4) does not comply with section 10921 of this title, is liable to the United States Government for a civil penalty of not more than $500 for each violation and for not more than $250 for each additional day the violation continues; *except that, in the case of a person who does not have authority under this subtitle to provide transportation of passengers, or an officer, agent, or employee of such person, that does not comply with section 10921 of this title with respect to providing transportation of passengers, the amount of the civil penalty shall not be more than $1,000 for each violation and $500 for each additional day the violation continues.* After the date of enactment of this sentence, no penalties shall be imposed under this subsection for a violation relating to the transportation of household goods. Any such penalties that were imposed prior to such date of enactment shall be collected only in accordance with the provisions of subsection (h) of this section.

(h)—(k) * * *

§ 11905. Transportation of passengers without charge

A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or III of chapter 105 of this title that provides transportation of passengers without charge except as provided in section 10721(b), 10722 (c) and (d) (if the transportation is for its employees on sleeping and express cars or [linemen] *line maintainers* of telegraph and telephone companies), 10723(a)(1) (other than paragraph (1)(A) of that subsection when transportation is arranged by a municipal government), or 10724(a) of this title, shall be fined at least $100 but not

more than $2,000. An individual who uses a free ticket for, or accepts transportation subject to the jurisdiction of the Commission under those subchapters, except as provided in those sections, shall be fined at least $100 but not more than $2,000.

§ 11911. Issuance of securities; disposition of funds; restriction on ownership

(a) A director, officer, attorney, or agent of a carrier defined in section 11301(a)(1) of this title [or of a person to which that section is made applicable by section 11302(a) of this title] that knowingly agrees to or concurs in (1) an issue of securities or assumption of obligations or liability in violation of section 11301 of this title, (2) a disposition of securities in violation of an order of the Interstate Commerce Commission, or (3) an application not authorized by the Commission of the funds derived by the carrier through a disposition of securities shall be fined at least $1,000 but not more than $10,000, imprisoned for at least one year but not more than 3 years, or both.

(b) A person that violates section 11322 of this title shall be fined at least $1,000 but not more than $10,000, imprisoned for at least one year but not more than 3 years, or both.

SECTION 14 OF THE MOTOR CARRIER ACT OF 1980

RATE BUREAUS

SEC. 14. (a) * * *

(b)(1) There is hereby established a Study Commission to be known as the Motor Carrier Ratemaking Study Commission, hereinafter in this section referred to as the "Study Commission."

[(2) The Study Commission shall make a full and complete investigation and study of the collective ratemaking process for all rates of motor common carriers and upon the need or lack of need for continued antitrust immunity therefor. Such study shall estimate the impact of the elimination of such immunity upon rate levels and rate structures and describe the impact of the elimination of such immunity upon the Interstate Commerce Commission and its staff. The study shall give special consideration to the effect of the elimination of such immunity upon rural areas and small communities.]

(2) The Study Commision shall make (A) a full and complete investigation and study of the collective ratemaking proces for all rates of motor common carriers of property and upon the need or lack of need for continued antitrust immunity therefor, and (B) a full and complete investigation and study of the collective ratemaking process for general rate changes, innovative fare changes, and broad changes in tariff structure of motor common carriers of passengers and upon the need or lack of need for antitrust immunity therefor. The Study Commission may study the collective ratemaking process for single-line or joint-line rates motor common carriers of passengers. Each such study shall estimate the impact of the elimination of such immunity upon rate levels and rate structures and describe the impact of the elimination of such immunity upon the Interstate Commerce Commission and its staff. Each such study shall give special consideration

to the effect of the elimination of such immunity upon rural areas and small communities.

(3) The Study Commission shall be comprised of [10] *14* members as follows:

(A) three members appointed by the President of the Senate, two from the membership of the Committee on Commerce, Science, and Transportation and one from the membership of the Committee on the Judiciary;

(B) three members appointed by the Speaker of the House of Representatives, two from the membership of the Committee on Public Works and Transportation and one from the membership of the Committee on the Judiciary; [and]

(C) four members of the public appointed by the President, two from the membership of national trade associations of shippers, one who is motor common carrier of property from the membership of the national trade association of motor carriers, and one who is a motor common carrier of property from the membership of a major regional motor common carrier rate bureau[.]; *and*

(D) four members of the public appointed by the President, who is a motor common carrier of passengers receiving $3,000,000 or more per year in revenues from motor common carrier of passengers operations, one who is a motor common carrier of passengers, receiving less than $3,000,000 per year from motor common carrier of passengers operations, and two who are not affiliated with the motor common carrier industry.

No member of the Study Commission who is appointed under clause (C) of this paragraph shall vote on any matter before the Commission related to motor common carriers of passengers, and no member of the Study Commission who is appointed under clause (D) of this paragraph shall vote on any matter before the Study Commission related to motor common carriers of property.

[(4) The Study Commission shall, not later than January 1, 1983, submit to the President and the Congress its final report including its findings and recommendations. The Study Commission shall cease to exist 6 months after submission of such report.]

(4) *The Study Commission shall submit to the President and the Congress its final report on the collective ratemaking process applicable to motor common carriers of property not later than January 1, 1983, and its final report on the collective ratemaking process applicable to motor common carriers of passengers not later than January 1, 1984. Such reports shall include, but not be limited to, the findings and recommendations of the Study Commission. The Study Commission shall cease to exist 6 months after submission of the last of such reports.* All records and papers of the Study Commission shall thereupon be delivered to the Administrator of General Services for deposit in the Archives of the United States.

(5)—(11) * * *

(12) There are hereby authorized to be appropriated, for fiscal years commencing on or after October 1, 1980, an amount not to exceed [$3,000,000] *$4,000,000* to carry out this subsection. Funds appropriated under this subsection shall be available to the Study Commission until expended, except that any such funds which remain unob-

ligated on the date that the Study Commission ceases to exist shall be forwarded to the Treasurer of the United States for deposit in the general fund of the United States Treasury.

SECTION 250 OF THE INTERNAL REVENUE CODE OF 1954

SEC. 250. CERTAIN PAYMENTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION.

(a) GENERAL RULE.—If—

(1) any corporation which is a rail carrier (as defined in section [10102(18)] *10102(19)* of title 49) makes a payment in cash, rail passenger equipment, or services to the National Railroad Passenger Corporation (hereinafter in this section referred to as the "Passenger Corporation") pursuant to a contract entered into under section 401(a) of the Rail Passenger Service Act of 1970, and

(2) no stock in the Passenger Corporation is issued at any time to such corporation in connection with any contract entered into under such section 401(a),

then the amount of such payment shall (subject to subsection (c)) be allowed as a deduction for the taxable year in which it is made.

* * * * * * *

SECTION 5201 OF TITLE 39, UNITED STATES CODE

§ 5201. Definitions

For purposes of this chapter—

(1) "Commission" means the Interstate Commerce Commission;

(2) "carrier" and "regulated surface carrier" means a railroad, a freight forwarder, a motor common carrier, or express carrier;

(3) "railroad" means a railway common carrier, including an electric urban and interurban railway commoncarrier;

(4) "freight forwarder" means any regulated freight forwarder which holds itself out to the general public as a common carrier to transport or provide transportation of property as authorized by a permit issued by the Commission;

(5) "motor common carrier" means a motor common carrier, except a passenger-carrying motor vehicle of such a carrier, within the meaning of section [10102(12)] *10102(13)* of title 49, that holds a certificate of public convenience and necessity issued by the Commission;

(6) "express carrier" means any express company engaged in transportation as a common carrier for hire under section [10102(7)] *10102(8) of title 49;*

(7) "person" includes any person other than a carrier holding a certificate of public convenience and necessity issued by the Commission; and

(8) "mail" includes equipment and supplies of the Postal Service.

SECTION 3 OF THE SECURITIES ACT OF 1933

SEC. 3. (a) (1)—(5) * * *

SECURITIES

(6) [Any security issued by a motor carrier the issuance of which is subject to the provisions of section 214 of the Interstate Commerce Act, or any] *Any* interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7)—(11) * * *

(b)—(c) * * *

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